

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ANDREW AARON, et al,)	
)	
Plaintiffs,)	Case No. 20-CV-1660
)	Milwaukee, Wisconsin
vs.)	
)	May 5, 2023
DOMINICK RATKOWSKI & JOSEPH ROY,)	8:42 a.m.
)	
Defendants.)	VOLUME 5
)	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE NANCY JOSEPH
UNITED STATES MAGISTRATE JUDGE, and a jury.

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P R O C E E D I N G S

THE COURT: Good morning, everyone.

THE CLERK: Judge Nancy Joseph is on the bench calling Case No. 20-CV-1660, Andrew Aaron, et al v. Dominick Ratkowski, et al. Matter for continuation of jury trial. Appearances please for the plaintiff.

MS. MOTLEY: Kimberly Motley appear in person with Attorneys Milo Schwab and Kathryn Knowlton.

THE COURT: Good morning to you all.

MR. WIRTH: Judge, the defendants appear by Wirth and Baynard. Joseph With and Jasmyne Baynard appearing.

THE COURT: Good morning to you as well. We had three matters that I took under advisement last night. Regarding the jury instructions, they have now been distributed to you.

So to make the record, one, plaintiffs had requested a punitive damages instruction as to both damages. Last night I heard arguments from the parties on the issue. After considering the arguments and most importantly and reviewing the evidence that has been presented to the jury, I do think it is appropriate to submit the instruction to the jury as I find there is sufficient evidence for them to consider this. In thinking about this, I spent a lot of time thinking about it. It was helpful to me to think this through the lens of the Rule 50(a) standard in that the evidence is to be looked at in favor of the non-moving parties in this case, the plaintiffs.

1 And in considering Rule 50(a) standard, the Court is
2 not to settle any credibility issues. That's for the jury. So
3 thinking it through that way because even with some of the mens
4 rea elements that I questioned the parties about last night in
5 discussing this, so much of it is tied with some credibility
6 determinations that the jury will have to make. So I do find it
7 is appropriate that they make that finding, so that's on page 24
8 of the final instructions that you received.

9 The second issue I took under advisement last night
10 was the *Senne* case, S-e-n-n-e, language that plaintiff had
11 requested. I did grant that language. It's on page 23 under
12 permissible use. But please note I edited to conform with the
13 Seventh Circuit law.

14 The law in the Seventh Circuit is broader than what
15 plaintiff had proposed. The plaintiff had proposed the language
16 same purpose, and the law is that it be the exception.
17 Additional disclosures et cetera must be compatible with the
18 purpose of the exception. So that is what is reflected. So
19 that is the law for the case. So to -- *Senne* is not the law and
20 should not be argued to the jury as such.

21 Third thing I took under advisement last night is
22 defendant had requested verification instruction. And language
23 as we had talked about came from *New Richmond*, which in turn
24 cited to *Dahlstrom*. One of the things we talked about last
25 night whether or not there was binding authority as the

1 Wisconsin Court of Appeals case on *New Richmond* is persuasive
2 authority in this case, but the Seventh Circuit case law is
3 binding on this Court and it is clear on this point, and that
4 language has been incorporated on page 22 of the final
5 instructions.

6 And because I had not -- did not have this language
7 before, I will now read it into the record as well as the
8 citations for *Dahlstrom*.

9 Page 22 under the paragraph that defines motor vehicle
10 records. It reads, "The DPPA protects only personal information
11 that has been obtained from motor vehicle records. The DPPA
12 does not apply to identical information so long as that
13 information flows from a source other than motor vehicle
14 records." That is directly from *Dahlstrom*, and the citation for
15 *Dahlstrom* is 777 F.3d 937. The pinpoint cite is 949 for that
16 proposition. So that is the law of the circuit regarding
17 identical information. With that, are the parties ready for
18 closing?

19 MS. MOTLEY: Your Honor, I do have one thing. I
20 apologize about this. Exhibit 223 I wanted to make sure that
21 that was also in the record. With my notes I didn't see that it
22 was. I believe that was entered in.

23 Defendant Roy, he was shown it and we talked about it.
24 I believe you published it. That is the open records request
25 from Hillary Mintz, three pages. He actually read from the

1 first page of that document.

2 THE COURT: Is there an objection as to 223?

3 MS. BAYNARD: We're just taking a look at it.

4 MR. WIRTH: It looks like the other record request,
5 Judge. We don't object.

6 THE COURT: With no objection, the number is 223; is
7 that correct? That is received. Anything further, Ms. Motley?

8 MS. MOTLEY: No, Your Honor.

9 THE COURT: Mr. Wirth.

10 MR. WIRTH: No, Judge. Thank you.

11 THE COURT: All right. With that I will bring the
12 jury out. I remind counsel our conversation last night on the
13 instruction to be reasonable, the time. And more importantly,
14 the instruction that the arguments be tethered both to law and
15 facts.

16 I do not want to entertain sidebars during the closing
17 arguments. Your final opportunity to talk directly to the jury
18 so please tether your arguments consistent with the law, the
19 facts and the rulings in this case.

20 MR. SCHWAB: Your Honor, I know since there is no
21 time, I'm going to be relatively brief. But just want to make
22 sure we're reserving the opportunity to offer some rebuttal
23 closing. We would otherwise reserve time. Just want to be
24 clear about that.

25 THE COURT: Yes, you will have your opportunity for

1 rebuttal. Thank you for reminding me of that. Rebuttal is not
2 a second closing argument. Rebuttal is rebuttal.

3 THE COURT: Please bring the jury out.

4 (Jury enters.)

5 THE CLERK: Judge Nancy Joseph is on the bench calling
6 Case No. 20-CV-1660, Andrew Aaron, et al v. Dominick Ratkowski,
7 et al. Appearances remain the same.

8 THE COURT: Good morning to the attorneys. Good
9 morning to everyone in court, and good morning to you, Members
10 of the Jury. We have reached the point of the case where you
11 will hear closing arguments from the lawyers. And before you do
12 that, I will give you instructions which is the law that is
13 applicable to the case.

14 The way I will do this this morning is I will give you
15 some preliminary instructions, invite the attorneys to make
16 their closing arguments and give you some concluding
17 instructions that you will have.

18 For the instructions, I like to come down from the
19 mountain top and bring the law to you rather than sitting up
20 here, so I will do so.

21 Good morning again, Members of the Jury. So you will
22 receive copies of the instructions to have with you in the jury
23 room. When you receive them, you will see that the instructions
24 are organized in three chapters for you. So the first chapter
25 is general instructions, most of which I gave you at the start

1 of the trial to have you listen to the evidence. And the second
2 chapter is specific to the claims in the lawsuit. And the third
3 is the final instructions you will get from me before you retire
4 to the deliberation room.

5 First instruction. Functions of the Court and the
6 jury. Members of the Jury, you have seen and heard all the
7 evidence. Before you hear the arguments of attorneys, I will
8 instruct you on the law. After the attorneys will present their
9 arguments, I will give you additional concluding instructions.

10 You have two duties as a jury. Your first duty is to
11 decide the facts from the evidence in the case. This is your
12 job and yours alone.

13 Your second duty is to apply the law that I give you
14 to the facts. You must follow these instructions even if you
15 disagree with them. Each of the instructions is important. You
16 must follow all of them. Perform these duties fairly and
17 impartially. Do not allow sympathy or prejudice to influence
18 you.

19 You should not be influenced by any person's race,
20 color or sex. Nothing I say now and nothing I said or did
21 during the trial is meant to indicate any opinion on my part
22 about what the facts are or about what your verdict should be.

23 Evidence. The evidence consists of the testimony of
24 the witnesses, the exhibits admitted in evidence and
25 stipulations. In this case, the parties have agreed to eight

1 stipulations.

2 First. On or around June 5, 2020, Dominick Ratkowski,
3 a civilian crime analyst hired by the City of Wauwatosa, created
4 a list;

5 Two. On January 17, 2021, Joseph Roy released
6 unredacted documents by email to 16 people by providing a drop
7 box link to documents which included Wauwatosa Police Department
8 Police reports, citations, squad and body camera video as well
9 as videos and reports produced from other agencies;

10 Three. Defendant Ratkowski did not get consent from
11 any plaintiff to obtain, use or disclose that personal
12 information from their motor vehicle records;

13 Four. The defendant Ratkowski knowingly obtained,
14 used or disclosed 44 plaintiffs' personal information;

15 Five. All of the plaintiffs' photos on the left side
16 of the list are driver's license photographs;

17 Six. The driver's license photographs on the list are
18 from motor vehicle records;

19 Seven. DOT means Department of Transportation;

20 Eight. The parties stipulate that no witness will
21 speak for another. But the plaintiffs may without objection
22 cite generalized experience testimony from one plaintiff as an
23 example of feelings that additional plaintiffs may share. You
24 must treat these facts as having been proved for the purpose of
25 this case.

1 What is not evidence. Certain things are not to be
2 considered as evidence. I will list them for you.

3 First, if I told you to disregard any testimony or
4 exhibit or struck any testimony or exhibit from the record, such
5 testimony or exhibits are not evidence and must not be
6 considered;

7 Second, anything that you may have seen or heard
8 outside the courtroom is not evidence and must be entirely
9 disregarded;

10 Third, questions and objections or comments by the
11 lawyers are not evidence. Lawyers have a duty to object when
12 they believe a question is improper. You should not be
13 influenced by any objection, and you should not infer from my
14 rulings that I have any view as to how you should decide the
15 case;

16 Fourth, the lawyers' opening statements and closing
17 arguments to you are not evidence. Their purpose is to discuss
18 the issues and the evidence. If the evidence as you remember it
19 differs from what the lawyers said, your memory is what counts.

20 Note taking. Any notes you may have taken during this
21 trial are only aids to your memory. The notes are not evidence.
22 If you have not taken notes, you should rely on your independent
23 recollection of the evidence and not be unduly influenced by the
24 notes of other jurors. Notes are not entitled to any greater
25 weight than the recollections or impressions of each juror about

1 the testimony.

2 Consideration of all evidence regardless of who
3 produced. In determining whether any fact has been proved, you
4 should consider all the evidence bearing on the questions
5 regardless of who introduced it.

6 Weighing the evidence. You should use common sense
7 and weigh the evidence and consider the evidence in light of
8 your own observations in life. In our lives, we often look at
9 one fact and conclude from it another fact exists. In law, we
10 call this inference. A jury is allowed to make reasonable
11 inferences. Any inference you make must be reasonable and must
12 be based on the evidence in the case.

13 Definition of direct and circumstantial evidence. You
14 may have heard the phrases direct and circumstantial evidence.
15 Direct evidence is proof that does not require an inference such
16 as the testimony of someone who claims to have personal
17 knowledge of a fact.

18 Circumstantial evidence is proof of a fact or series
19 of facts that tends to show that some other fact is true. As an
20 example, direct evidence that it is raining is testimony from a
21 witness who says I was outside a minute ago, and I saw it
22 raining.

23 Circumstantial evidence that it is raining is the
24 observation of someone entering the room carrying a wet
25 umbrella. The law makes no distinction between the weight to be

1 given to either direct or circumstantial evidence. You should
2 decide how much weight to give any evidence. In reaching your
3 verdict, you should consider all the evidence in the case,
4 including the circumstantial evidence.

5 Testimony of witnesses. Deciding what to believe.
6 You must decide whether the testimony of each of the witnesses
7 is truthful and accurate in part, in whole or not at all. You
8 also must decide what weight if any you give to the testimony of
9 each witness.

10 In evaluating the testimony of any witness including
11 any party to the case, you may consider, among other things, the
12 ability and opportunity the witness had to see, hear, or know
13 the things that the witness testified about; the witness'
14 memory; any interest, bias or prejudice the witness may have;
15 the witness' intelligence; the manner of the witness while
16 testifying; and the reasonableness of the witness' testimony in
17 light of all the evidence in the case.

18 Prior inconsistent statements or acts. You may
19 consider statements given by a party or witness under oath
20 before trial of evidence -- as evidence of the truth of what he
21 said in the earlier statements as well as in deciding what
22 weight to give his testimony.

23 With respect to other witnesses, the law is different.
24 If you decide that before trial one of these witnesses made a
25 statement not under oath or acted in a manner that is

1 inconsistent with his or her testimony here in court, you may
2 consider the earlier statement or conduct in deciding whether
3 the witness' testimony here in court was true and what weight to
4 give to the witness' testimony here in court.

5 In considering a prior inconsistent statement or
6 conduct, you should consider whether it was simply an innocent
7 error or an intentional falsehood and whether it concerns an
8 important fact or an important detail.

9 Number of witnesses. You may find the testimony of
10 one witness or a few witnesses more persuasive than the
11 testimony of a larger number. You need not accept the testimony
12 of the larger number of witnesses.

13 Absence of evidence. The law does not require any
14 party to call as a witness every person who might have knowledge
15 of the facts related to this trial. Similarly, the law does not
16 require any party to present as exhibits all papers and things
17 mentioned during this trial.

18 Multiple claims, multiple plaintiffs, multiple
19 defendants. You must give separate consideration to each claim
20 and each party in this case. Although there are two defendants,
21 it does not follow that if one is liable, the other is also
22 liable. Although there are 57 plaintiffs, it does not follow if
23 one is successful the others are too. In considering a claim
24 against a defendant, you must not consider evidence admitted
25 only against the other defendant or only as to other claims.

1 Demonstrative exhibits. Certain demonstrative
2 exhibits have been shown to you. Those presentations are used
3 for convenience and to help explain the facts in the case. They
4 are not themselves evidence or proof of any facts.

5 Burden of proof. When I say a party must prove
6 something by a preponderance of the evidence or when I use the
7 expression if you find or if you decide, this is what I mean.
8 When you have considered all the evidence in the case, you must
9 be persuaded that it is more probably true than not true.

10 Judge's comment to lawyer. I have a duty to caution
11 or warn an attorney who does something that I believe is not in
12 keeping with the rules of evidence or procedure. You are not to
13 draw any inferences against the side whom I may caution or warn
14 during the trial.

15 So this concludes our first chapter, the general
16 instructions. I will go back on the bench, and then I will
17 invite the attorneys to make their closing arguments.

18 THE COURT: Mr. Schwab.

19 MR. SCHWAB: Thank you, Your Honor.

20 THE COURT: You may proceed, Mr. Schwab.

21 MR. SCHWAB: Thank you, Your Honor. Ladies and
22 Gentlemen of the Jury, good morning. It's been a long week.
23 Some of this has been slow and tedious. But before we get
24 going, I want to thank you. Thank you for giving up your week,
25 for spending it here with us going through at times dozens of

1 names and dozens of records. But the reason we did that and the
2 reason you're here is because this is important.

3 You heard from nine plaintiffs. And as you've seen
4 many more have been in the courtroom everyday. That's because
5 what you're here to do today is important.

6 Now, you've heard testimony over of the past four days
7 about disclosures and use and access of people's personal,
8 private, driver's license information. You've seen how that
9 information has been used and disclosed. This isn't normal.
10 The way that these two individuals treated plaintiffs'
11 information is not normal.

12 It is not normal to build a target list based solely
13 on someone's participation in a protest, and it is certainly not
14 normal for that to be done by an employee of a police
15 department.

16 You heard testimony yesterday from Mr. Wrucke. They
17 never created another list like that. In fact, the only time
18 they created a list is in an investigation of a hostage
19 situation. They don't keep a list of the Elks Club. They don't
20 keep a list of political opponents. Thank God. I don't want
21 the police department to do that. If they need no get in
22 contact with you, then that is the appropriate time to get your
23 contact information, to reach out to you.

24 Government employees should not target us on the basis
25 of our speech, and they should not invade our right to privacy

1 in order to do so. That's ultimately what this case is about,
2 about the right to privacy. It is about a right to be secure in
3 our personal information and know that that information is not
4 going to be misused by the government and by the employees and
5 not to be misused for improper purposes.

6 Mr. Ratkowski had no legitimate function, no
7 legitimate purpose for accessing or obtaining or using and/or
8 disclosing plaintiffs' addresses, their driver's license
9 pictures. He had pictures of them. He didn't need to go get
10 more pictures. And you heard, his testimony is, this is normal,
11 this is the normal things we do, and I didn't mean to target
12 them. That was a mistake.

13 You see his own language. That's not a mistake. That
14 is not a normal thing to write if you don't mean to target
15 people. He just said the quiet part out loud, and now he's
16 getting called to account. He didn't know this email would come
17 out when he wrote it, and that's why he wrote it.

18 Now, he came in here and told you, gave you testimony,
19 told you that, in fact, he built in response -- in response to
20 incidents. That is because he needs you to believe that.
21 Without that, without the fact that the idea that this was in
22 response to incidents, he knows that he loses. He knows that
23 there is no proper purpose if it is not investigating or
24 deterrence or preventing crime.

25 He offered testimony that each person was out and he

1 gave a specific date. And throughout the entire record, he
2 speaks not to the need to investigate a particular incident, but
3 about completing a list of people who are consistently involved
4 in protests, about building a list of active protesters.

5 If there was one email one in which he said here are
6 the people who were at this incident here or a supervisor saying
7 I need you to look into July 7th, you would have seen it. You
8 can bet they would have shown it to you. It doesn't exist. It
9 doesn't exist because his purpose was not to respond to
10 incidents but was building a list of active protesters.

11 This is actually one of his first emails on this, and
12 what does he say? It is about people who are consistently
13 posting videos, photos and comments. This is after the day he
14 says the Cheese Cake Factory happened. Is there anything about
15 this email that suggests he's investigating an incident? He's
16 talking about social media. He's talking about what people are
17 posting on line, not these people were seen at an event.

18 These are the people that are posting. These are the
19 people that are showing up to express their constitutionally
20 protected rights and posting on line and being tagged on line
21 and commenting on line.

22 This isn't in relation to an incident. This isn't in
23 response to an incident. This was because they showed up to
24 protest, and it wasn't just limited to this. Eighty-eight
25 concerned citizens wrote a letter to their government saying

1 these are our concerns, these are our grievances. What was his
2 response? I am going to ID all of the names at the end of the
3 letter. Can you imagine what it must feel like for these
4 peoples to find out when they wrote a letter to their government
5 asking for change, someone in the police department started
6 investigating them for it? Someone on the police department
7 investigated them for writing a letter to their government.
8 This isn't normal.

9 And it is not limited just to this. As you heard, he
10 investigated John Larry. You saw Mr. Larry, the principal of a
11 high school. Mr. Larry served on an ad hoc committee on
12 policing and systematic citizen members. What did defendant
13 Ratkowski do? He created an investigative file on him that
14 included his work, his education, his wife's name and birth
15 date, and he sent that to other people, including Mr. Vetter the
16 captain. I forget his position, the captain who you met. Just
17 in case someone asks for proof that they are in the People's
18 Revolution, I attached their Facebook information as members of
19 the group.

20 What legitimate police purpose could there be for
21 investigating people for their participation on an ad hoc
22 committee on policing and systematic change? There is none.

23 What is the through line? The People's Revolution.
24 The People's Revolution is what connects these two things. His
25 accessing, his using, his disclosing of people's personal

1 private information. It wasn't just limited to this one list.
2 He went and did it in this case, too.

3 This was not investigation of an incident. This was a
4 group that was called together by the government to consider
5 policy changes, and he investigated them too, and he let the
6 police department know that these people were also involved in
7 the People's Revolution, and they wanted to give them the proof.

8 And you heard him testify that when he gave his
9 deposition when he was not a defendant, he agreed. The sole
10 qualification for making your way onto this list was mere
11 affiliation, affiliation with one protest group. It wasn't
12 incidents. It wasn't to investigate. It wasn't because they
13 committed a crime or might commit a crime or had been violent or
14 might be violent. Mere affiliation.

15 But I'll tell you what you also didn't hear this week,
16 why he needed their addresses. His justification is for
17 building a list, but not why he needed that information. You
18 heard multiple of the supervisors get up there and say we always
19 have access to this information. If they needed to go reach out
20 to people, they needed to go knock on those people's door, they
21 could have accessed that address at the time they needed it.
22 Every single one of these plaintiffs, all 44 on Mr. Ratkowski's
23 claims, had their DOT addresses put into the system
24 prospectively. There's no justification for that. He didn't
25 have a legitimate law enforcement purpose for accessing and

1 using their home addresses. He didn't have a legitimate purpose
2 for accessing their driver's license pictures and using that in
3 the list. Even if the list was okay, it is not. You have to
4 have a justification for using and obtaining that particular
5 data, and you didn't even hear an offer as to why he did that.
6 Because there is no answer. Because there is no answer.
7 Because he didn't need that data. He didn't need it. Nobody
8 knocked on anybody's doors. Nobody contacted any of these
9 plaintiffs. They didn't need that data. It was just part of a
10 target list.

11 Now, if you look at the target list, and I'm sure
12 you've been itching to look at it. And in a few minutes when
13 you go back in there, you'll be able to ask for it. You'll
14 notice that there are entries that aren't even related to people
15 or cannot reasonably be related to any incident, any
16 investigation. Why do they need to know the people's movement
17 was renting a loft somewhere, a meeting space? Why would they
18 possibly need to know that to investigate an incident at Cheese
19 Cake Factory? Why would they possibly need to know who is a
20 core member if they were investigating an incident in the past
21 to try to identify people who may have violated some ordinance?

22 And as you notice for everyone's address, it says DOT
23 as of. You know where they got that information. You know
24 where he got that information. There's no reason to put that
25 Mr. Larry was a member of the ad hoc committee. That's not an

1 investigation. That is in support of building a list of active
2 protestors. It all makes sense. It all makes sense. And it
3 all works together if you just go to what the most obvious
4 answer is.

5 And why did he create a page targeting the Cole
6 family? What possible investigatory purpose could there be for
7 creating a page titled Cole family? What possible investigatory
8 purpose could there be for labeling people as photographers?
9 What possible investigatory purpose would there be for putting
10 the pictures of children on this list?

11 Now, when you go back there, you're going to get a
12 verdict form for each defendant. I'm going to go through how
13 we'd like you to fill out the verdict form for Mr. Ratkowski, I
14 apologize.

15 So Mr. Ratkowski built this list. He obtained
16 people's personal information all for improper purposes, and
17 then he sent it around to 34 people outside of Wauwatosa Police
18 Department and who knows how many within. And we do not even
19 know the full extent of how far this thing has been shared. We
20 heard testimony from a detective from Minneapolis who was sent
21 this list not by Mr. Ratkowski but by Mr. Conte who
22 Mr. Ratkowski encouraged to share it around.

23 Not only did he target these people, not only did he
24 invade their privacy, he was reckless with that information. He
25 didn't protect it. There's not an email out there where he says

1 be careful with this. Hey, this is confidential. This is
2 restricted information. This is for law enforcement purposes
3 only. Now, it is a protestors involved list. Share it around.
4 Out of state already. She didn't know why she got it.

5 Now, when you go back there, we're going to ask to you
6 check yes for every single punishment. For every single
7 plaintiff, we're going to ask you for one obtainment for when he
8 went and got it, for when he went and got each plaintiffs'
9 personal information out of the motor vehicle records, which has
10 been stipulated. And we're going to ask you to put 35 in there.
11 35 disclosures.

12 The number of uses, I am going to leave that to you.
13 But you did hear him testify on the second day of trial that he
14 used it 197 times. You heard him testify yesterday that he was
15 in this document five to 750 hours that year working everyday
16 prowling social media, looking for more information that he
17 could put into this list. He was using this list constantly.

18 I apologize, 44. Now, just to return your attention
19 to this argument that he made that these were in response to
20 specific incidents. That's what he needs you to believe. If
21 you don't believe that, you have to find for the plaintiffs.
22 That's why he made that argument. That's why he made that list.
23 That's why he won't acknowledge what is in those emails, what is
24 in his prior testimony. If that's true if this was a list of
25 protestors if this was not to investigate something, then he

1 loses.

2 Now, I'm going to turn our attention to the second
3 defendant, Mr. Roy. You recall Mr. Roy took the stand on
4 Wednesday. He is the head or was the head of the Open Records
5 Department for the Wauwatosa Police Department during this time
6 period. And on January 7th of 2021, he sent a dump of documents
7 to 16 different people and specifically told them that the
8 documents are being provided unredacted and then put it in a
9 drop box link. This isn't normal. This is not how open records
10 works. You don't send all of the records that you might be
11 producing to all of the people that you might be producing all
12 at once.

13 You respond to the requests, and you give the
14 documents that are requested. You heard testimony I got a lot
15 more documents than I asked for. I only asked for this one
16 ticket, and I got everyone's personal information.

17 Now, Mr. Roy's entire defense is that he couldn't
18 possibly know where this information came from. That's it. Do
19 you believe that he didn't know where this information came
20 from? You should decide for him. If you believe that he does
21 know and he did know at that time where this information came
22 from, you got to rule for the plaintiffs.

23 Now, if you recall that long tedious time when I had
24 to go through 50 citations like this and you go through that
25 address under Ms. Bogenberger's name, her height, weight, hair

1 color, eye color and driver's license number just to confirm
2 from him that he was now here this week telling you that he
3 didn't know where it came from.

4 And I pulled up that video. This was the document he
5 was looking at in that video. This is the information he was
6 looking at.

7 (Whereupon tape is played.)

8 His own words. He knew. He knows how the system
9 works. This information is auto filled from DOT records, yet he
10 had the gall to come in here and tell you he couldn't possibly
11 know.

12 Then, we turn to those arrest records, those
13 narratives of arrest citations. Larry's DOT record shows him to
14 be five-foot 11, 250-pounds; Welch's DOT record shows him to be
15 six-foot tall; Kafer's DOT record shows him to be six-feet one;
16 Coleman's DOT record has him at five-foot six; Ahmed's DOT
17 record has her at five-foot, one inch; Vitucci's record as her
18 at five-two; Wilborn's DOT record has him at five-four; Hayes
19 DOT record has him to be five-seven; Larson's DOT record has him
20 at five-ten.

21 Even when he was confronted with this, he could not
22 acknowledge what is painfully obvious, that any person would
23 know where this information comes from. When we give our height
24 and weight and eye color and hair color to the DMV, that
25 information, that personal information, is supposed to be

1 protected. It is private information.

2 Now, you're going to get a similar form for Mr. Roy.
3 We're not saying that he obtained these records from DOT. We're
4 not saying that he used these records from DOT. It is clear
5 that he disclosed records from the Department of Transportation,
6 motor vehicle records that he knew to be from there, and he did
7 it 16 times for each of the plaintiffs, 16 times.

8 Ladies and Gentlemen, these two individuals were given
9 the opportunity to come in here and tell you their story.
10 Instead, they told a different story, a different one from their
11 previous depositions, a different one from the record. They
12 invaded the plaintiffs' personal information. They invaded that
13 right to privacy, and they can't even accept accountability here
14 today. They'll offer anything to get out of it. They'll offer
15 anything to get out of it.

16 But you know what? You have the proof. You have the
17 citations. You have those arrest records. You have the target
18 list. You have his email sending out. They are all in
19 evidence. You have them. Look at them and fill out this
20 verdict form and fill out Mr. Ratkowski's verdict form as I show
21 you. When you say yes to both of those, on both of those forms
22 for each plaintiff when you say yes, you're going to turn to one
23 more question.

24 Is there an award that we should give plaintiffs, each
25 plaintiff, to send a message to Mr. Ratkowski, to send a message

1 to Mr. Roy, to send a message that you don't treat peoples'
2 privacy so flippantly, that you don't do this, that this isn't
3 normal, and that they knew what they were doing. Or at the very
4 least were reckless how they treated these plaintiffs' personal
5 private information. I'm not going to give you a number. I
6 trust you. I trust you to come to a decision together on what
7 amount will send a message and tell people and tell these two
8 people don't do this. Thank you.

9 THE COURT: Thank you, Mr. Schwab. Mr. Wirth.

10 MR. WIRTH: Thank you, Your Honor. Good morning,
11 Ladies and Gentlemen of the Jury. As I began the week, I will
12 end it as such. We need to hear both sides. We cannot -- You
13 cannot get distracted in this case by the efforts to use emotion
14 and anger and accusation as the substitute for evidence.

15 What I'm going to do in this closing argument is
16 review with you the evidence and the law. And as I look back on
17 the evidence in this case, I cannot remember a single
18 plaintiffs' witness, not one, who has defined for you what a
19 motor vehicle record is.

20 This is a Driver's Privacy Protection Act case, a DPPA
21 case. The only evidence, the only data that is at stake in this
22 case is motor vehicle records. That suggests two possibilities.
23 Either they don't know what the definition of a motor vehicle
24 record is, and there's a table of three competent attorneys. I
25 seriously doubt what that is or they don't like the answer.

1 A motor vehicle record is defined to include a
2 prohibition that the state department shall not knowingly
3 disclose a motor vehicle record except as provided. If it is a
4 motor vehicle record, it isn't protected, and there is an
5 important distinction at work in this case. A motor vehicle
6 record is not the same as personal information.

7 You heard throughout this week that the plaintiffs
8 would like to equate the two. Our personal information was
9 released. Our personal information was in that citation. Our
10 personal information was on that list. Personal information is
11 not a motor vehicle record.

12 For instance, this is a driver's license. What's on
13 the driver's license is personal information. The driver's
14 license is not a motor vehicle record. The motor vehicle record
15 is stored at the Department of Transportation in Madison. That
16 is where the motor vehicle records are. Unless it comes from
17 there, it is not a protected piece of evidence, piece of
18 evidence that is at stake in this lawsuit.

19 We have to get away from arguing if there's personal
20 information that's being released, it is a violation of the
21 DPPA. It is not. The idea about this distinction is that the
22 Act was put in place to protect us from having our motor vehicle
23 information obtained from the state.

24 You heard Katie Schuh tell you that there are a dozen
25 different places where our personal information can be accessed.

1 You heard Lieutenant Roy, Captain Vetter, you heard Dominick
2 Ratkowski tell you that there are additional ways that the
3 police in their reporting can come up with personal information
4 including self reporting.

5 I am not sure there's a disconnect here because you
6 heard some questioning during the testimony of plaintiffs. Did
7 you ever shout out your name? Did you ever shout out your
8 address? Did you ever shout out your license information or
9 your height or your weight? That's not self reporting. Being
10 stopped by a police officer at a civil disturbance such that a
11 citation can be issued and asking you for your driver's license
12 and you providing it to them, that is self reporting. That is
13 not motor vehicle record information. It is private information
14 for sure, but it didn't come from Madison. It came from the
15 person holding the license saying here's my license. That is
16 self reporting. That's one of the ways.

17 You also heard that there are databases like the NCIC,
18 which is kind of a federal level, that keeps track of people who
19 have had law enforcement contact. CIB, which is the state
20 level, that has had contact with police departments. You've
21 heard things like the DNR has our information, and you've also
22 heard that an officer who logs into the TIME System. Katie
23 Schuh can check all those boxes to make sure that the
24 information he or she is looking for pops up. Is it one of the
25 12, the DOT? It certainly is, but there are 11 other sources --

1 at least 11 other sources, including this self reporting, that
2 can communicate personal information, not motor vehicle records.

3 The DPPA protects only personal information from motor
4 vehicle records. The law requires that for the plaintiffs'
5 personal information to be protected by the DPPA, the personal
6 information that you heard for four days, they're upset about,
7 this is the DPPA lawsuit. It is only protected by the DPPA if
8 that information must come from motor vehicle records. If there
9 is identical information if a person is looked up in the system
10 that flows from another source, the 12 we've talked about
11 including self reporting, it is not protected by the DPPA.

12 This lawsuit isn't a referendum on big brother is
13 watching us. This lawsuit is about the DPPA and whether the
14 plaintiffs have proven to the certainty that the Court has
15 instructed you that every piece of information about which they
16 complain came only from the motor vehicle department, only from
17 the Department of Transportation, not from anywhere else.

18 Here's what you heard from the witnesses who actually
19 testified about these things. Motor vehicle record means any
20 record that pertains to a motor vehicle operator's permit, motor
21 vehicle title, motor vehicle registration, identification card
22 issued by the Department of Motor Vehicles.

23 In other words, the record is what's back in Madison
24 pertaining to our driver's license, pertaining to our Wisconsin
25 identification license.

1 Self reporting and I didn't make this big enough. But
2 on these citations that were blown up for you, shown for you,
3 gone through one at a time where it says something like
4 defendant cooperated with verbal ID and confirmed it with his
5 DOT photo.

6 MS. MOTLEY: Sorry to interrupt.

7 MR. WIRTH: Wrong example. But the idea that the
8 citations in there that have I cooperated, I turned over my
9 photo ID. I apologize. That is not a motor vehicle record.
10 That is what's called self reporting. Thank you.

11 You were just shown this for Mr. Larry. John Larry is
12 wearing a red number seven. Larry's DOT record shows him to be
13 five-eleven, 250, brown eyes, black hair. The plaintiffs want
14 you to believe that because this has DOT record, it came from
15 the DOT.

16 There's another example because the motor vehicle
17 record must be the only source of the information. What police
18 are permitted to do is gather the information. Dominick
19 Ratkowski testified about it for two days and then verified it
20 with DOT records because the law says that if the DOT record is
21 just identical to what you've collected in other ways, it is not
22 actionable under the DPPA.

23 This is not a violation of the DPPA if Larry's DOT
24 record shows what they have gathered in their investigation
25 through other sources. The DOT designation does not mean the

1 DOT was the sole source of that information.

2 Now, there is a little more understanding that this is
3 not private information in this lawsuit. It is DPPA protected
4 motor vehicle information. Let's talk about what Dominick
5 Ratkowski did.

6 Personal information does not include information on
7 driving violations. Some of the citations that you were shown
8 during the presentation by the plaintiffs for certain
9 plaintiffs -- let me just make sure that I've identified one
10 properly -- were what are called Wisconsin Uniform Citations.
11 Those are driving violations citations. You saw several
12 plaintiffs whose inclusion in the data dump were moving
13 violations, driving violations. Those are not protected DPPA
14 documents.

15 In fact, the only record that the parties agree on,
16 the only stipulation that the parties agree on are that the
17 driver's license photos on the left side of Dominick Ratkowski's
18 list. That came from the DOT. That he pulled up from the DOT.
19 We all agree those driver's license photos were sourced from the
20 DOT and are motor vehicle records.

21 But what you heard Mr. Ratkowski testify to is why did
22 he get that information? He pulled up that information to
23 verify the information, the identities, the location of the
24 people that he had already found through what he calls open
25 source materials. That is not a violation of the DPPA. Police

1 can call up your driver's license to verify stuff that they've
2 gotten from open source material without it being a violation of
3 the DPPA.

4 And I have to stop here because I am about to start
5 talking about this list that Dominick Ratkowski prepared.
6 Dominick Ratkowski's assignment was to gather information on
7 people as the summer of 2020 was beginning to produce 100 days
8 of marches, protests at various locations, at private
9 businesses.

10 You heard the way Dominick Ratkowski's mind works is
11 he does a list. There was some mention in closing that I can't
12 let go about a second list. There is no second list. There is
13 no evidence in this case of a second list involving an inclusion
14 committee. That to the extent that the plaintiffs believe
15 something happened outside this courtroom, there was no evidence
16 permitted regarding this inside the courtroom.

17 It is not our burden of proof here to demonstrate a
18 purpose for each plaintiff that was included on the Ratkowski
19 list, but we did. We had Mr. Ratkowski go through and explain
20 in each time, in each circumstance, in each evidence -- as a
21 result of each incident why people were added to the list.

22 Here's another example of what cannot be DOT records.
23 The citations, and there were a lot of them in the evidence in
24 this case that include -- Phone numbers don't come from the DOT.
25 The DOT doesn't produce phone numbers when you access their

1 records. That's what all of the officers who access this system
2 have told you.

3 So far if you're keeping track, the citations upon
4 which the plaintiffs base their DPPA lawsuit include self
5 reporting, telephone numbers references to DOT without
6 references to DOT being the source of the material. They
7 involve data that is not protected.

8 Dominick Ratkowski is a civilian crime analyst
9 employed by the City of Wauwatosa Police Department, and the
10 effort -- the repeated effort in this case to cast crime
11 analysts as somehow not qualified to receive this exchange of
12 information between departments is incorrect.

13 The DPPA specifically says that a private person
14 acting on behalf of the Wauwatosa Police Department, actually
15 the law enforcement entity in carrying out its functions. A
16 crime analyst is someone qualified to receive and exchange the
17 information. When we're talking about information in this case,
18 the only thing we're talking about is the photographs down the
19 left side of the list.

20 You heard Mr. Ratkowski, and I caution myself that we
21 are only referring to incidents in the abstract. You heard
22 Mr. Ratkowski. You heard Captain Vetter. You heard Lieutenant
23 Roy. You heard Captain Wrucke tell you that the summer of 2020
24 was a tumultuous time in the City of Wauwatosa. There were
25 incidents involving the Cheese Cake Factory at Mayfair. There

1 were incidents involving a march slash procession that caused
2 traffic elements. There was an incident involving the mayor's
3 house. There was an incident involving a former police
4 officer's home. After each of those incidents is when Dominick
5 would go back in and in response to the incident add to the
6 list.

7 The list, as you heard him say, was to identify and
8 anticipate witnesses, leaders. The suggestion that there's no
9 reason to have the core members identified, you heard Captain
10 Vetter say that he contacted the core members ahead of these
11 events to try to make sure that everybody understood the ground
12 rules so that there would be public safety.

13 Videographers, what I call memorialists, people who
14 would routinely videotape or live stream or preserve the videos
15 as many as 300 different marches. That's why they are on the
16 list. Contact, planning, ability to elicit cooperation so that
17 everybody's right to protest, everybody's right to publically
18 assemble in a lawful manner and express their opinions coincide
19 with the rights of others to lawfully enjoy their community,
20 their yards, their roads.

21 Never once in any sense was a plaintiff in this case
22 prevented from exercising that constitutional right. In fact,
23 you heard the plaintiffs in this case testify that in that
24 summer, they protested 90 times, 300 times, 100 times. Without
25 trying to be flip about it, if this had been a target list, it

1 was a lousy target list because it didn't stop anything. What
2 it did, what it was good at is exchanging information so that
3 law enforcement could prepare in each of the communities that
4 borders Wauwatosa for the undertaking, the deployment of
5 manpower, the planning for street closures, the ability to make
6 sure or access for public service was still available. That is
7 what the document was for.

8 That document was never once exchanged with anyone
9 other than law enforcement. It was a law enforcement document.
10 And you heard every police personnel who testified in this case
11 tell you that that is a vital function of law enforcement, the
12 ability to communicate. While there are jurisdictional
13 boundaries, there are no walls. The communities have to
14 communicate. The communities have to cooperate.

15 That list was never distributed publically. The
16 question is why was it distributed at all? Well, you heard the
17 testimony. Because that is the ability to cooperate, the
18 ability to exchange information. I'll give you information that
19 protects your community. You give me information that protects
20 my community.

21 The suggestion that that information not be exchanged
22 unless you know everyone on the list is involved in what is
23 being sought is impossible. That's not how data is exchanged by
24 law enforcement agencies. We can't send the data out to New
25 Berlin and say we're pretty sure -- we know these are the four

1 people that you're probably interested in. We don't know that.

2 Dominick said I recognized a couple people, and I told
3 New Berlin, here is the list. See if this helps you. It is a
4 luxury to stand here three years later and say, well, I know
5 that these plaintiffs weren't involved in New Berlin, weren't
6 involved in Milwaukee, weren't involved in Brookfield. That's
7 not the timeframe that you examine. The timeframe that you
8 examine for why it was distributed is the timeframe that
9 includes when the decisions were being made.

10 I am not even sure why this was raised but the
11 suggestion was Dominick said that he only started the list as a
12 method of monitoring protests. What he actually testified under
13 oath -- Dominick Ratkowski was deposed twice. So you decided to
14 create a list of known protestors on your own? Yes because that
15 is a part of the open source information and planning processes,
16 to plan for potential violence, to identify witnesses, victims
17 and suspects of any potential violence that came out of a
18 protest. It is a part of the intel gathering process to
19 identify people who are actively involved in a specific
20 incident.

21 Of course he started the list in response to
22 incidents. Of course he added to the list in response to
23 incidents. That's what he was doing for six months in the
24 summer of 2020.

25 So what are the permissible purposes for accessing the

1 very limited amount of data in this case that is actually
2 covered by the DPPA? Law enforcement agency in carrying out its
3 functions, planning, anticipation, response, personnel,
4 monitoring, following up on prosecution, mailing citations, all
5 law enforcement functions. Exchanging information with
6 surrounding communities in exchange for their information, all
7 part of law enforcement functions. The DPPA permits this. The
8 DPPA permits the exchange of, transfer, distribution of this
9 data as long as in correspondence with a state statute that
10 permits it for public safety.

11 Wisconsin has a state statute, what's called the
12 mutual assistance statute. Upon the request of any law
13 enforcement agency, the law enforcement personnel of any other
14 law enforcement may assist the requesting agency. There is a
15 state statute that permits the transfer of this data.

16 You have to ask yourself as jurors when you are given
17 the special verdict form with respect to Dominick Ratkowski's
18 list, is there any data on there that you are certain to at the
19 level that the Court will instruct you that is Department of
20 Motor Vehicle information that couldn't have come from anywhere
21 else, that didn't come from anywhere else?

22 I will recommend to you that the only evidence of that
23 are the driver's license photos, and that the driver's license
24 photos were collected for a purpose permitted by the DPPA.

25 So when you are asked to answer the special verdict

1 question with respect to Dominick Ratkowski, you will see that
2 it asks did he collect this data obtain, use or distribute this
3 data with no law enforcement purpose? You will answer the 44
4 plaintiffs no because he did have a law enforcement purpose.

5 Next I'll turn to Mr. Roy, Lieutenant Roy. You were
6 told that the method of his open records production is unusual.
7 There has been no witness in this case who testified that the
8 manner of Joseph Roy's open records production was unusual.
9 None. Argument is not evidence.

10 The Court has already told you that. Joseph Roy
11 entertained a dual purpose, a dual commitment on January 7,
12 2021, and he's protected in that dual purpose by the language of
13 the DPPA, which states that it protects information from
14 employees who shall not knowingly disclose that information.

15 So there are -- This kind of dual obligation under the
16 public records open records law and the DPPA. Open records law
17 is state statute. There is a public records shall be construed
18 in every instance with a presumption of complete public access
19 consistent with the conduct of government business.

20 The denial of public access generally is contrary to
21 the public interest and only in an exceptional case may access
22 be denied.

23 Joseph Roy's duty is to disclose public records. Yes,
24 he has to temper that duty against what is required by the DPPA,
25 but the DPPA is a specific exception. It exempts motor vehicle

1 records.

2 With respect to the records that Joseph Roy disclosed,
3 plaintiffs have two things they must prove. Must prove. First,
4 that the information in the citations could only have come from
5 Madison, from connecting to Madison and downloading the
6 information. Not only can they not prove that, but a good
7 section of the citations that they blew up and asked Joseph Roy
8 about are self evident, not Department of Transportation
9 records.

10 The ones with telephone numbers. The ones that
11 include self identification. The ones that are moving traffic
12 violations. Those are self evident, not protected by the DPPA.
13 The plaintiffs to whom those citations belong have not proven
14 their case from the basis.

15 Did Joseph Roy testify that there is a way to have
16 citations for arrests self populate? Yeah, they played his
17 deposition testimony when he said that. Mr. Roy testified when
18 he was here on the stand that he was explaining a way that that
19 happens. That's a way that the issue or the citation can
20 connect directly to the Department of Transportation. It will
21 auto populate if you do that.

22 What is the next logical question that should have
23 been asked? Are there other ways? If that question had been
24 asked, that's the question I asked him. You would have heard
25 him say yeah, there are about a dozen other ways that

1 information can get into those citations.

2 So suggesting that and we concede the Department of
3 Transportation connection is one way for that information to get
4 into those citations. The difficulty however is there's nothing
5 about the citation that shows that occurred. The citation is --
6 I forgot one of the cases used the word agnostic.

7 The citation itself does not profess where its data
8 came from. You can't look at the citation and say that's DOT
9 because it's not. There are a dozen different ways for those
10 citations.

11 So we are at day five of the trial. And what the
12 plaintiffs are suggesting to you is that the DOT information
13 could have been one of 12 ways that that information got into
14 the citation. That is a failure of proof. At this point in a
15 trial, you are supposed to be convinced that is the only way
16 that information got in there.

17 The second layer of proof with respect to the DPPA
18 claim against Joseph Roy is that he knew that was -- that DOT
19 records were the only source of information that could be in
20 those reports, including the ones that have phone numbers, are
21 moving violations, including the incident reports that say that
22 the people cooperated and gave their IDs and identified
23 themselves. The documents, the evidence itself, arrest records,
24 CIB searches, the -- The citations to DOT within those reports
25 cannot be shown to be anything other than a verification. And

1 because of that, that means that the questions on behalf of
2 Joseph Roy need to be answered no for two reasons.

3 First, there's been a failure of proof that the only
4 source of the information is DOT records.

5 And second, that Joseph Roy could look at that
6 information and know it was only one of 12 sources that created
7 that information. That has not been proven in this lawsuit.

8 With respect to the email that was sent on January 7,
9 2021 one email, yes, 16 recipients. But that doesn't answer the
10 question of whether it was a knowing disclosure.

11 So I will wrap it up. As I have suggested, at this
12 stage in this kind of trial, I get it. Our side is like the dry
13 evidence side, and the plaintiffs side is the emotional side,
14 emotion, tears, one guy that was outraged. Don't substitute for
15 evidence.

16 That's fine on YouTube and on streaming and on
17 websites, and it is absolutely fine in terms of demonstrations
18 and marches and expressing our public opinion and private
19 opinion in a public setting challenging our government,
20 challenging our police department. Absolutely fine outside the
21 courtroom.

22 Inside the courtroom evidence is proof. Inside the
23 courtroom truth controls because it has to be proven not just
24 argued. There isn't evidence in this case that any DPPA
25 violations have occurred. Was personal information disclosed?

1 Yes, it was. Is that a balancing act in our state that requires
2 personal private information to be disclosed on some occasions?

3 Yes, it is.

4 So when you get to the two questions one for Ratkowski
5 one for Roy, you will need to go through each of the plaintiffs
6 and answer no because both of those questions ask whether the
7 plaintiffs have proven to you that (a), there was no law
8 enforcement function served by the list. Of course there was.
9 And (b), that Joseph Roy -- that the data could only have come
10 from the Department of Transportation and Joe Roy knew it.

11 As you have probably seen, the plaintiffs will not
12 listen to me, and they don't have to. But they have to listen
13 to you. They have to listen to the group of people charged with
14 upholding the law even in uncomfortable circumstances. They
15 have to listen to the truth.

16 So I will ask you again, Ladies and Gentlemen, let
17 your verdict speak the truth whatever that truth may be. Thank
18 you very much.

19 THE COURT: Thank you, Mr. Wirth. Mr. Schwab, am I
20 calling on you again? I am calling on Ms. Motley.

21 MR. SCHWAB: Ms. Motley will do the rebuttal.

22 MS. MOTLEY: Your Honor, before I give my remarks, I
23 ask for a brief sidebar. I don't want to say anything
24 inappropriate when I give my rebuttal.

25 THE COURT: Is it something we can make a record of

1 after your rebuttal?

2 MS. MOTLEY: Yes. Good morning. Thank you all for
3 listening to everything that's been presented before you. I
4 know plaintiffs appreciate at it. The defendants appreciate at
5 it, and I certainly know the Court appreciates it as well.

6 This is an extraordinarily important case, and only
7 you can decide whether or not defendant Ratkowski and defendant
8 Roy violated the DPPA. We've talked at you. We've run to the
9 sidebars a million times. We probably annoyed you this week.
10 But now it is up to you to make the decision on whether they
11 violated, and we believe that not only did they violate the
12 DPPA, but they did so willfully and recklessly.

13 This case is not about data. This case is about
14 peoples' personal, private information that every single one of
15 these 57 plaintiffs has a right, has a legal right to be
16 protected.

17 So let's talk about sort of what Attorney Wirth just
18 went through. On June 5, 2020, Dominick Ratkowski created a
19 list. We know that he created this target list that you guys
20 have been seeing. You have sort of seen it up here, different
21 snatches of different pages. You've seen us hold it up. You
22 have a right to request this information so you can see it for
23 yourself to see what is in this document.

24 It is a fact that there is the driver's license
25 information of 44 plaintiffs. That's a fact. Every picture on

1 the right that you see the plaintiffs is their driver's license
2 picture. And the fact that Dominick Ratkowski decided on his
3 own, which he testified to, to go into their DMV records simply
4 because they were protesting, that is a violation. That is not
5 an exception to the DPPA. It is never a law enforcement
6 function, a legitimate law enforcement function to violate the
7 DPPA or to violate your First Amendment right to freedom of
8 speech.

9 Now, thankfully you're going to get some jury
10 instructions, and the Judge already went over those with you.
11 And the jury instructions are going to instruct you on how
12 certain things are defined. Jury instruction page 22 defines
13 what is personal information from a driver's record. Personal
14 information is a person's address. Personal information is a
15 person's date of birth. You'll see on this document as Attorney
16 Schwab noted, it says DOT address for 38 plaintiffs on this
17 document. DOT, which we all know means Department of
18 Transportation.

19 They want to argue to you say don't believe what your
20 lying eyes see. You'll got in your jury instructions, and
21 you'll have this in the back. Also on page 22, it defines what
22 is highly restricted personal information. An individual's
23 photograph. Your driver's license photograph is highly
24 restricted personal information. That's the law. That is the
25 law, and you will see it. You will be able to hold it. It is

1 on page 22 of this jury instruction.

2 We know with regards to the DPPA it says a person who
3 knowingly obtains, uses or discloses personal information from a
4 motor vehicle record for a purpose not permitted under the DPPA
5 shall be liable to the individual to whom the information
6 pertains. That is the law in black and white, Ladies and
7 Gentlemen.

8 We talked about in opening what does obtain, use or
9 disclose mean? We heard Dominick Ratkowski testify, and we've
10 heard the plaintiffs testify he obtained their driver's license
11 photos. That is indisputable. We heard that he used those
12 photos. He logged into his computer, typed in his user name,
13 typed in his password. Then, he took the photo and he put it on
14 a piece of paper. That is use. That is swiping that credit
15 card. He said they swiped that credit card 197 times.

16 Now, when you go to the back, you're going to get a
17 special verdict form. And you know with all this tech that
18 we've been doing, it is going to be kind of nice to put pen to
19 paper I have to say. This is what it's going to look like,
20 okay.

21 You're first going to be asked, did Ratkowski
22 knowingly obtain, use or disclose personal information from a
23 motor vehicle record for a purpose not permitted by the DPPA?
24 That's a yes or no question. For all 44 plaintiffs, that is a
25 yes, y-e-s, for everybody.

1 Then, you will have to determine how many times. How
2 many times did he obtain plaintiffs' personal information?
3 Well, we know that's one, right. He went into the system and he
4 typed in his user name and password, and he obtained their
5 information. That's one. Plus how many times did he swipe that
6 credit card?

7 Dominick Ratkowski we saw him count with regards to
8 the target list how many times he swiped that credit card, and
9 he said he used that document 197 times, that document that
10 contained 44 plaintiffs' personal information and highly
11 restricted personal information. So that's 197. And how many
12 times did he disclose it?

13 How many times did he disclose it? We heard
14 Mr. Ratkowski talk about he disclosed it 34 times to people
15 outside the Wauwatosa Police Department. That's 34, plus 34.
16 So you add that up. 198, 232 times. 232 times Mr. Ratkowski
17 obtained, used or disclosed these 44 plaintiffs' personal
18 information from their motor vehicle records. We believe he did
19 so willfully and recklessly.

20 Now, you heard about what is a motor vehicle record.
21 I believe Attorney Wirth misspoke. This is something you're
22 also going to get in your jury instructions. The definition of
23 a motor vehicle record is a driver's license.

24 Jury instruction page 22. It says, a motor vehicle
25 record means any record that pertains to a motor vehicle

1 operator permit, motor vehicle title, motor vehicle registration
2 or identification card issued by the DMV. Your driver's license
3 is a motor vehicle record, Ladies and Gentlemen, and you will
4 have this definition in the back.

5 We saw Tracy Cole's motor vehicle record. We saw
6 Tracy Cole's motor vehicle record information was put on this
7 target list. She has a different address, but her entry on the
8 target list, that is the same address as is on her motor vehicle
9 record or her driver's license. She doesn't live at that DOT
10 address anymore.

11 MR. WIRTH: Judge, can we do a rebuttal?

12 THE COURT: I'll take that up later, Mr. Wirth.

13 Ms. Motley, you may continue.

14 MR. WIRTH: I am objecting. This is not rebuttal. I
15 will put it that way.

16 THE COURT: Objection is noted. The jury will be
17 properly instructed. Ms. Motley, you may continue.

18 MS. MOTLEY: Thank you.

19 THE COURT: Briefly, Ms. Motley, as it is rebuttal.

20 MS. MOTLEY: I understand. I understand he defined a
21 motor vehicle was not a driver's license.

22 THE COURT: You may continue, Ms. Motley.

23 MS. MOTLEY: So we've seen in black and white a motor
24 vehicle record. So when you're deciding whether Ratkowski
25 knowingly obtained, used or disclosed personal information and

1 their argument is he did so with a purpose not permitted by the
2 DPPA. We believe the evidence has shown that. Permissible
3 uses.

4 Now, you heard from Attorney Wirth that when
5 Mr. Ratkowski used this information, it was permissible. You
6 will get the jury instruction page 23 that will say this
7 sentence. It is the last sentence on page 23. If a permissible
8 use attaches to any obtainment, use, or disclosure of motor
9 vehicle record information, any further use or disclosure must
10 be compatible with the purpose of the exception.

11 So how do you break this down? So in order for the
12 argument to be as Attorney Wirth said that he used this for law
13 enforcement function, law enforcement needs to know that
14 function.

15 So for instance, when he's telling people to share
16 that freely and they don't know what this document is or why
17 they need to share it, that is not a law enforcement function.
18 If he's telling people to -- just giving it to people without
19 explaining what's on this information where this information is
20 coming from, why they need this information, that is not a law
21 enforcement function.

22 You heard Attorney Wirth also talk about this law
23 enforcement mutual assistance, Wisconsin Statute 66.0313. They
24 have flashed this really quickly and let it go away. Let's
25 unpack this.

1 According to this statute (2) it says, "Upon the
2 request -- request of any law enforcement agency, including
3 county law enforcement agencies as provided in 59.28, the law
4 enforcement personnel of any law enforcement agency may assist
5 the requesting agency within the latter's jurisdiction." They
6 have to request it. They didn't request it.

7 Thirty-four people that Dominick Ratkowski disclosed
8 this information to outside the Wauwatosa Police Department did
9 not request to get this target list. And guess what? If they
10 wanted this information, if they needed to look up the
11 information, they could have gone into the TIME System
12 themselves. He went out and advertised that he had this
13 document and didn't tell them what was in this document or where
14 this information came from or why are these people on this
15 document.

16 As Attorney Wirth noted, we heard from by zoom from
17 Hennepin County. Detective Nelson testified. She's never even
18 heard of Wauwatosa. She didn't know who Dominick Ratkowski was.
19 She didn't request this document. The person that she was maybe
20 interested in was not one of the plaintiffs. She got it from
21 the guy that Dominick Ratkowski said feel free to pass this
22 along.

23 Verification. You heard that a lot and Attorney Wirth
24 mentioned that, right. This is also -- I believe this is also
25 in your jury instruction. According to 18 USC 2721(3)

1 for verification where they are saying repeated verify, verify,
2 verify, verify. I don't understand why they are saying that.
3 They agree the picture on the piece of paper is from peoples'
4 driver's license, but this is rebuttal. I have to rebut what he
5 just said.

6 So verification. For the use in the normal course of
7 business by a legitimate business or his agents, employees or
8 contractors. But only (A) to verify the accuracy of personal
9 information submitted by the individual -- submitted by the
10 person to the business or its agents, employees or contractors.
11 You didn't hear one single plaintiff that said they submitted
12 their information. You didn't hear that.

13 Subsection (B), if such information as so submitted is
14 not correct or is no longer correct, to obtain the correct
15 information, but only -- only for the purpose of preventing
16 fraud by, pursuing legal remedies against, or recovering on a
17 debt or security interest against the individual.

18 That verification argument is not valid. We heard
19 from Peter Sparks. Attorney Wirth forgot his name. He said the
20 man that got upset. That man is Peter Sparks. I don't condone
21 his behavior in court. But you know what? His feelings are
22 valid. You heard him testify he protested one time, and that
23 man that got upset had his driver's license information
24 unlawfully given to multiple people, 34 people and used 197
25 times according to Mr. Ratkowski, and he has the right to be

1 protected as well. His information has the right to be
2 protected as well. This is not a case about politics. It is a
3 case about privacy. About privacy.

4 Attorney Wirth suggested that, you know, this is an
5 emotional case. I think he's correct with that. He's correct
6 this is a lousy target list. Yep, it is. We agree with that.
7 We can stipulate to that right now. I'll sign it no problem.
8 This list is lousy.

9 We heard from Tracy Cole, and we heard some of the
10 emotions of some of the plaintiffs that came here and talked
11 about, you know, what being targeted or how they felt by being
12 on this document. And honestly, Ladies and Gentlemen, it
13 doesn't matter what this document is called. You can call it
14 the target list, the Ratkowski list, the protestor list, the
15 Mork and Mindy list. It doesn't matter. It is about 44
16 plaintiffs' information that was repeatedly misused willfully
17 and recklessly.

18 This may have well be divided 44 ways. Because when
19 you are back there and you are going through the special verdict
20 form, you're going to have to decide for each individual
21 plaintiff.

22 We went over this that we believe strongly that
23 Dominick Ratkowski violated the DPPA. He did it repeatedly.
24 These are the different emails. You have the right to this
25 information if you so choose. We heard about Burlington. He

1 gave it to four people that none of these people were being
2 investigated to his knowledge. None of them were being looked
3 at by Burlington, but they sent it to four people on
4 November 10th.

5 As Attorney Wirth just argued, this list was building.
6 They had the fully formed list by November 10th of 2020. All
7 these 44 plaintiffs were disclosed to four people in Burlington.

8 March 31st we know that Diane Nelson received the
9 target list. She testified to that. We believe the evidence
10 shows that Dominick Ratkowski's repeated willful and reckless
11 violation of the DPPA, there needs to be a message sent to him
12 to stop him from doing this again. I believe that his willful
13 reckless behavior was demonstrated with Diane Nelson who
14 testified from Hennepin County. She received this list she said
15 on March 31st of 2021.

16 You heard Attorney Wirth talk about Captain Vetter.
17 You heard Attorney Wirth say that Dominick Ratkowski was only
18 working on this thing for six months. That's not true. That's
19 not true. The information doesn't lie. This is the target
20 list. Page 1. Page 1 of this target list. Look at Khalil
21 Coleman's picture on the right. He doesn't have a picture on
22 the left, right. Exhibit 1001 which is their exhibit, page 456.
23 This is the last version of the target list, the November 10th
24 version of the target list. His picture is there. The version
25 we have his picture is not there. This wasn't just a six-month

1 project. This thing is a living document and still lives on.

2 We heard about John Larry. Now, with regards to
3 defendant Roy. As Attorney Wirth made the argument that, you
4 know, he was verifying. He was verifying. You heard what he
5 said. You saw what you saw. The facts are the facts. It says
6 DOT records. I don't know how much clearer we need to be.

7 For at least ten plaintiffs, Exhibit 215, it says DOT
8 record on their document that he released publically. For
9 Exhibit 214, he testified in the depositions that the DOT
10 information auto populates in. He knows that, and he testified
11 to it under oath when he wasn't a defendant in this matter.

12 And for many of the plaintiffs like Jill Ferguson who
13 testified, her information auto populated in when she was
14 arrested. By the way arrested for a non-criminal citation,
15 civil ticket. For Molly Nilssen, she testified as well.

16 Now, Attorney Wirth made mention about the Open
17 Records Law, and I believe he mentioned about how Luke Vetter,
18 Captain Vetter, excuse me. He gave a little infomercial about
19 the Open Records Law and his feelings on it. This case isn't
20 about Open Records Law.

21 And the US Constitution Supremacy Clause Article VI
22 paragraph 2 basically stands for the proposition that the US
23 Constitution is commonly referred to as a supremacy clause. It
24 establishes that the federal constitution and federal law
25 generally takes precedent over state laws and even state

1 constitutions. We shouldn't even have to talk about this, but
2 unfortunately since Attorney Wirth brought it up, I get to rebut
3 it.

4 We are here in this beautiful courthouse in this
5 beautiful federal courthouse to decide whether or not the DPPA,
6 which is a federal law, was violated. The Open Records Law is
7 Wisconsin state law. We are not here to legislate on which law
8 is better than the other.

9 But according to the Constitution, federal law trumps
10 state law and that is why you're here. You are here to judge
11 whether or not these two defendants violated the DPPA.

12 Knowing. Now, with regard to Joseph Roy, he said --
13 The argument I believe Attorney Wirth just made is he didn't
14 know. He didn't type it in himself yet he only just testified
15 that he knew that it auto populates in. But on page 22 of your
16 jury instructions, it defines knowingly for you.

17 And it says, a person who acts knowingly if he has
18 actual knowledge -- actual knowledge of the facts giving rise to
19 the violation or if a reasonable person acting in a circumstance
20 and exercising reasonable care would have that knowledge.

21 Joseph Roy has been working for the Wauwatosa Police
22 Department for a number of years. He was in charge of the Open
23 Records Division on January 7th of 2021. He is not a stupid
24 man. He knows how to read. You don't get into that position
25 unless you have intelligence, obviously. He knew, and he knew

1 and he said he knew. It says it on the document. He testified
2 where that information comes from.

3 Now, we believe that the behavior of Joseph Roy was
4 willful reckless. Attorney Wirth talked about how Wauwatosa is
5 the sunshine law, whatever he said, that you heard testimony how
6 you know they are supposed to be open and giving to open
7 records, right. And all this information of plaintiffs was
8 disclosed to 16 people. That credit card was swiped 16 times
9 for 32 plaintiffs. Their personal information went to 16
10 people.

11 But in order for an open records request to be valid
12 or even make sense, you need to make a request. We heard
13 testimony from when I was questioning defendant Roy, we went
14 over Exhibit 223. This was requested by Hillary Mintz. She
15 asked for a copy of the separation agreement for Officer Joseph
16 Mensah. That was not in the request. That's a stipulation. It
17 was citations, records, squad videos and other videos.

18 You heard from Attorney Guckenberg. He said he was
19 looking for the citation for his client Mark Frayley. That was
20 not in the request, and he got all this information of all these
21 other plaintiffs. It is not an open records request if you
22 don't make the request.

23 Now, these are the plaintiffs. They are real people
24 whose information was really violated, and it was violated in a
25 way that was willfully and recklessly. This is who they are,

1 and this is how Dominick Ratkowski saw them. This is what he
2 did to them. He violated their privacy repeatedly, willfully
3 recklessly, and so did defendant Roy.

4 Now, the burden is on the plaintiffs. Our burden is
5 by the preponderance of the evidence, which means is it more
6 likely true than not? So if you believe that we are over
7 50 percent, 50.001 percent in making arguments in terms of they
8 violated the DPPA, then you must find for us, the plaintiffs.

9 This is not a case about politics. This is a case
10 about privacy. You're also to be asked on the special verdict
11 form did we prove by a preponderance of the evidence that
12 Dominick Ratkowski acted willfully or in reckless disregard of
13 the law? We believe that answer should be yes. I think the
14 evidence has shown that.

15 You're going to have to decide what amount of punitive
16 damage should be awarded against Ratkowski to send him a
17 message. Was his behavior willful and reckless? You're going
18 to get the same questions with regards to Joseph Roy. Was his
19 behavior willful and reckless? We believe it was. We believe
20 it was.

21 You're also going to be asked what amount of punitive
22 damages should be awarded against Roy as well as Ratkowski. We
23 ask that you extend a message to Dominick Ratkowski, send a
24 message to Joseph Roy when deciding punitive damages. This is
25 not normal. Both defendants violated the DPPA willfully and

1 recklessly, and I thank you very much for your time and for your
2 diligence and your diligent note taking. We ask that you come
3 back with a verdict that states that our plaintiffs are entitled
4 to their right to privacy. Thank you.

5 THE COURT: Thank you, Ms. Motley. Ladies and
6 Gentlemen of the Jury, you now have heard the attorneys closing
7 arguments, so I will continue the instructions that you will
8 receive to do your deliberations into the jury room.

9 The Driver's Privacy Protection Act elements of the
10 claim. As you have heard, the claims before you are based on a
11 federal law known as the Driver's Privacy Act or DPPA, which is
12 included in the United States Code 18 USC 2721 to 2725.

13 The DPPA provides that a person who knowingly obtains,
14 discloses or uses personal information from a motor vehicle
15 record for a purpose not permitted under the DPPA shall be
16 liable to the individual to whom the information pertains. To
17 establish that the defendants violated the DPPA, plaintiffs must
18 prove each of the following.

19 One, the defendants knowingly obtained, disclosed or
20 used personal information;

21 Two, from a motor vehicle record;

22 Three, for a purpose not permitted by the DPPA. If
23 you determine that the plaintiffs proved that the defendants
24 knowingly obtained, used or disclosed plaintiffs' personal
25 information from a motor vehicle record for a purpose not

1 permitted by the DPPA, it is up to you to determine the number
2 of times that happened.

3 Some relevant definitions. Knowing. A person acts
4 knowingly if he has actual knowledge of the facts giving rise to
5 the violation or if a reasonable person acting in circumstances
6 and exercising reasonable care would have that knowledge.

7 Personal information. Personal information means
8 information that identifies an individual including an
9 individual's photograph; Social Security Number; driving
10 identification number; name; address, but not the five digit zip
11 code; telephone number; medical disability information; but does
12 not include information on vehicular accidents; driving
13 violations and driver status.

14 Highly restricted personal information. Highly
15 reflected personal information means an individual's photograph
16 or image, Social Security Number, medical or disability
17 information.

18 Motor vehicle record. Motor vehicle record means any
19 record that pertains to motor vehicle operator permit, motor
20 vehicle title, motor vehicle registration or identification card
21 issued by the Department of Motor Vehicles.

22 The DPPA protects only personal information that has
23 been obtained from motor vehicle records. The DPPA does not
24 apply to identical information so long as that information flows
25 from a source other than the motor vehicle records.

1 Permissible uses. The DPPA defines permissible uses
2 in relevant part as follows. For use by any government agency,
3 including any court or law enforcement agency, in carrying out
4 its function or any private person or entity acting on behalf of
5 federal, state, local agency in carrying out its functions.

6 For any other use specifically authorized under the
7 law of the state that holds the record if such use is related to
8 the operation of a motor vehicle or public safety. If a
9 permissible use attaches to any obtainment, use or disclosure
10 motor vehicle information, any further use or disclosure must be
11 compatible with the purpose of the exception.

12 Punitive damages. If you find that the defendant is
13 liable for a violation of the DPPA, then you have the discretion
14 to award punitive damages. The purpose of punitive damages are
15 to punish a defendant for his conduct and to serve as an example
16 or warning to the defendants and others not to engage in similar
17 conduct in the future.

18 Plaintiff must prove by a preponderance of the
19 evidence that punitive damages should be assessed against
20 defendants. You may assess punitive damages only upon proof of
21 willful or reckless disregard of the law.

22 An action is willful if defendant knew that he was
23 violating the DPPA or was indifferent as to whether his action
24 violated the DPPA. An action is in reckless disregard of the
25 law if taken with knowledge that it may violate the law.

1 If you find that punitive damages are appropriate,
2 then you must use sound reason in setting the amount of those
3 damages. Punitive damages, if any, should be in an amount
4 sufficient to fulfill the purposes I have described to you but
5 should not reflect bias, prejudice or sympathy toward either
6 party.

7 In determining the amount of any punitive damages, you
8 should consider the following. The reprehensibility of the
9 defendants' conduct, the impact of the defendants' conduct on
10 plaintiff, the relationship between plaintiff and defendant, and
11 the likelihood that the defendant would repeat the conduct if an
12 award of punitive damages is not made.

13 The fact that I have instructed you on the matter of
14 punitive damages should not be considered as suggesting any view
15 of the Court as to which party is entitled to your verdict in
16 this case. Instructions on punitive damages have been given
17 solely for your guidance.

18 Coming to the final instructions. This case will be
19 submitted to you in the form of a special verdict form which has
20 been prepared for your convenience. Mr. Miller, if you please
21 distribute the special verdict form to the jury. All right. If
22 you follow along with me.

23 So as you see on the special verdict form, it has the
24 caption, the name of the case. And it reads We, the Jury,
25 empaneled and sworn to try the issues in this action being

1 directed to the Court the following questions submitted to us
2 for verdict find and answer as follows.

3 Question one. For each plaintiff, the defendant,
4 Dominick Ratkowski, knowingly obtained, used or disclosed
5 plaintiffs' personal information from a motor vehicle record for
6 a purpose not permitted by the DPPA. You will complete the box
7 yes or no.

8 If you write yes in any boxes, write in how many times
9 total. Please go with me to page 3 for question two. Question
10 two. For each plaintiff, the defendant, Joseph Roy, knowingly
11 disclosed plaintiffs' personal information from a motor vehicle
12 record for a purpose not permitted by the DPPA. Complete the
13 box yes or no. If you write yes in any boxes, write in how many
14 times total.

15 Question three on page 4. Did plaintiffs prove by a
16 preponderance of the evidence that defendant, Dominick
17 Ratkowski, acted willfully or in reckless disregard of the law?
18 There is a slot for you to answer yes or no.

19 Question four. If you answer yes to Question Number 3
20 above, what amount of punitive damages should be awarded against
21 plaintiff Ratkowski?

22 Question five. Did plaintiffs prove by a
23 preponderance of the evidence that defendant, Joseph Roy, acted
24 willfully or in reckless disregard of the law? Again, there's a
25 slot for you to answer yes or no.

1 Question six. If you answered yes to Question Number
2 5, what amount of punitive damages should be awarded against
3 Roy? And there's a slot for you to answer.

4 Please sign and date the final page of this verdict
5 form which will be signed by your foreperson and dated.

6 You will note that certain questions in the special
7 verdict form are to be answered only if you answered the
8 previous question in a particular manner; therefore, it is
9 extremely important that you read each question very carefully
10 before you answer it. Do not needlessly answer questions.

11 Your duty is to answer the questions in the special
12 verdict form which according to the evidence and my instructions
13 you're required to answer in order to arrive at a completed
14 verdict.

15 It then becomes my duty to direct judgment according
16 to law and according to the facts as you have found from them.

17 You are to answer the questions in the special
18 verdicts form solely upon the evidence received in this trial.
19 You are to be guided by the instructions and your own sound
20 judgment in considering the evidence in the case and in
21 answering each question.

22 You must not concern yourselves about whether your
23 answer will be favorable to one party or the other nor what the
24 final result of the lawsuit may be. Your verdict must represent
25 the considered judgment of each juror.

1 In order to return a verdict, it is necessary that
2 each juror agree. Your verdict as to each question you are
3 required to answer in order to arrive at a completed verdict
4 must be unanimous. You should make every reasonable effort to
5 reach a verdict. In doing so, you should consult with one
6 another, express your own views and listen to the opinions of
7 your fellow jurors.

8 Discuss your differences with an open mind. Do not
9 hesitate to reexamine your own views and change your opinions if
10 you come to believe it is wrong, but you should not surrender
11 your honest beliefs about the weight or effect of evidence
12 solely because of the opinions of your fellow jurors or for the
13 purpose of returning a unanimous verdict.

14 Each of you should give fair and equal consideration
15 to all evidence and deliberate with the goal of reaching an
16 agreement which is consistent with the individual judgment of
17 each juror. You are impartial judges of the facts. Your sole
18 interest is determined whether the plaintiffs have proved their
19 case by a preponderance of the evidence.

20 Members of the Jury, this case is ready to be formally
21 turned over to you. You will consider the case fairly,
22 honestly, impartially and in light of reason and common sense.
23 Give each question in the verdict your careful and conscientious
24 consideration.

25 In answering each question, free your minds of all

1 feelings of sympathy, bias or prejudice. This case has taken a
2 great deal of time and effort to prepare and try. There is no
3 reason to think that it could be better tried or that another
4 jury is better qualified to decide it. It is important
5 therefore that you reach a verdict if you can do so consciously.

6 Nothing said in this instructions and nothing in the
7 verdict form prepared for your convenience is meant to suggest
8 or convey in any way or manner as to what verdict I think you
9 should find. What the verdict shall be is your sole and
10 exclusive duty and responsibility. Let your verdict speak the
11 truth, whatever the truth may be.

12 If it becomes necessary during your deliberations to
13 communicate with me, you may send a note through the bailiff
14 signed by your foreperson or by one or more Members of the Jury.
15 No Member of the Jury should attempt to communicate with me by
16 any means other than a signed writing. I will never communicate
17 with you, with any Members of the Jury on any subject touching
18 the merits of the case or otherwise other than in writing or
19 orally here in open court.

20 You will note from the oath that the bailiff -- the
21 oath about to be taken by the bailiff that he too as well as
22 other persons are forbidden to communicate in any way or manner
23 with any Member of the Jury on any subject touching on the
24 merits of the case. Bare in mind also that you are never to
25 reveal to any person, not even me, how the jury stands

1 numerically or otherwise on the questions before you until after
2 you have reached a unanimous verdict.

3 Upon your return to the jury room, your first duty to
4 be to select a foreperson who will preside over your
5 deliberations. Complete the special verdict form with the
6 answers you have agreed upon and serve as your spokesperson here
7 in court. His or her vote however is entitled to no greater
8 weight than the vote of any other juror.

9 During the course of your deliberations, you are
10 should assume the attitude of judges of the facts rather than
11 partisans or advocates. Your highest contribution to the
12 administration of justice is to ascertain the facts in this case
13 and return a verdict accordingly.

14 When your deliberations are concluded and your answers
15 inserted in the verdict form, the foreperson will sign and date
16 the verdict and all of you will return with your verdict here in
17 open court. If the CSO will approach and stand.

18 (Whereupon the CSO is sworn in.)

19 THE COURT: All right. Mr. Miller, if you please
20 distribute the jury instruction packets to the jurors. Please
21 all rise for the jury. The jury may be escorted to the
22 deliberation room.

23 (Jury excused.)

24 THE COURT: I believe both Mr. Wirth as Ms. Motley
25 asked to be heard during closing argument. Ms. Motley.

1 MS. MOTLEY: Your Honor, I think it is moot. I erred
2 on the side of caution just didn't bring up -- I didn't say
3 something in my closing that I thought would be an issue so I
4 left it out.

5 THE COURT: Thank you, Ms. Motley. Mr. Wirth.

6 MR. WIRTH: It is probably moot now, Judge. It is
7 more along the lines of I guess it can be probably could have
8 been a corrective instruction. It turned into an argument about
9 the wording. I do know that the law says that a driver's
10 license isn't a motor vehicle record. There is case law on
11 that, but it can be couched in terms of the argument about what
12 the instruction means.

13 THE COURT: Thank you, Mr. Wirth. The jury has been
14 properly instructed on the relevant law. I think that will
15 address that concern. I ask that you attorneys please give your
16 contact information to court staff. You may leave the building
17 if you wish, but just be available to be reached. If there is a
18 question from the jury that I can reach you and do a phone
19 conference or if you're around get back in the courtroom
20 whatever is easier. If you need to leave it is okay for us to
21 do by telephone on the record as well.

22 As we break for lunch and let the jury do their work,
23 I want to assess where all the admitted evidence is and I have
24 everything in order to send to the jury room. I will have the
25 parties double check that I have everything.

1 MR. SCHWAB: Do you have everything is filed in the
2 system or the book reflects the binders reflect accurately?

3 THE COURT: Yeah so the not all exhibits -- not all
4 binders were admitted. So if you could pull the admitted
5 evidence into one location so we have it so jurors ask for a
6 particular item, I have it lined up and ready to go. So does
7 that answer your question, Mr. Schwab?

8 MR. SCHWAB: Yeah, I think so. You would like us to
9 make sure we compile a binder of all admitted evidence and take
10 out the non-admitted.

11 THE COURT: Even if it is not in a binder, have it
12 packed up ready to go if we are looking for it if requested by
13 the jury.

14 MR. SCHWAB: Thank you. Anything from the defense?

15 MR. WIRTH: No Judge. We have the exhibit that we're
16 putting in place redacted. So I guess my only concern is that
17 what's proposed to go to the jury be in its redacted form.

18 THE COURT: Yes, that's why I asked the attorneys to
19 check make sure it is in the form that has been redacted and
20 approved by the Court to go in. Have it in one place to get our
21 hands on it if it is requested and in the proper form.

22 Before we break -- Lastly before we break, I want to
23 congratulate both sides for getting their case to the jury. I
24 know that preparing for jury trial is a lot of work, and both
25 sides put in tremendous hours, passion, sweat into the case, and

1 now it is in the hands of the jury. Thank you. Have a good
2 break.

3 (Lunch recess taken.)

4 (Back on the record.)

5 THE CLERK: Judge Nancy Joseph is back on the bench
6 calling Case No. 20-CV-1660, Andrew Aaron, et al v. Dominick
7 Ratkowski, et al. Appearances remain the same.

8 THE COURT: Thank you. We have a question from the
9 jury or note from the jury. The jurors are requesting the
10 following evidence. Exhibit 311 as admitted in the court,
11 contents of drop box link sent by Joseph as admitted to
12 evidence. Permissible uses of DPPA. We think there are 14.

13 So as to 311, it will go in. It is admitted into
14 evidence. I want to make sure I have the right one to send in.
15 Contents of the drop box link sent Joseph as was admitted into
16 evidence. I think this concerns the exhibit that had the stack
17 of citations and the exhibit that had the incident reports.
18 Either party want to be heard on that? In other words, am I
19 right?

20 MS. MOTLEY: I believe it is Exhibit 214 is the
21 citations and then Exhibit 215, but it is just that one incident
22 report I believe redacted.

23 THE COURT: I want to make sure. Again whatever I am
24 sending in is one the proper exhibits and properly redacted.
25 Who has that for us?

1 MR. SCHWAB: We're going through 214 and pulling out
2 non-plaintiffs, non-parties just to make sure.

3 THE COURT: If you can pull that out. As for
4 permissible uses of the DPPA, we think there are 14. I think
5 the answer to that is to refer to your jury instructions.
6 Either side wish to be heard?

7 MS. MOTLEY: No, Your Honor.

8 MR. WIRTH: No. The jury instructions included the
9 two. Is that what we're taking about?

10 THE COURT: They are asking for permissible uses of
11 the DPPA. The jury instruction has a section on that.

12 MR. WIRTH: Okay.

13 THE COURT: All right. So because it will take you
14 some time to pull the Roy exhibits, we're going to send in a
15 note with what we have already so we don't keep them waiting.

16 MR. WIRTH: What are we sending in now? I am trying
17 to take notes.

18 THE COURT: 311.

19 MS. KNOWLTON: We have that.

20 THE COURT: Please show that to Mr. Wirth to make sure
21 to confirm that I have the right one.

22 MS. KNOWLTON: We do have -- You're saying when asking
23 about 215 and 214, 214 is set. But 215 we have to quick redact.

24 THE COURT: Mr. Wirth, any objection to the version of
25 311 that's going in?

1 MR. WIRTH: No objections to 311. As soon as I see
2 214, I assume I won't have objections there either.

3 THE COURT: CSO, please go ahead and submit
4 Exhibit 311 to the jury and others are coming.

5 MR. WIRTH: There are two exhibits with the incident
6 reports. Weren't there 215 and 216?

7 MS. BAYNARD: Your Honor, was there a specific exhibit
8 or want the contents of the Roy disclosure?

9 THE COURT: So I will read it. Contents of drop box
10 link sent by Joseph as was admitted into evidence.

11 MS. MOTLEY: Your Honor, I'm sorry. Weren't there
12 certain pages of 215 admitted? I don't recall if the whole
13 thing was admitted.

14 MS. BAYNARD: I thought two pages were.

15 MR. WIRTH: Weren't there seven or eight people I went
16 through on closing?

17 MR. SCHWAB: I don't know what 216 will look like from
18 a redaction standpoint.

19 MR. WIRTH: 216 is definitely admitted. I don't know
20 what we're going to do about redacting it.

21 MS. MOTLEY: It is 300 pages.

22 THE COURT: 316 is the stack of reports, incident
23 reports.

24 MR. WIRTH: 216.

25 THE COURT: I mean 216.

1 MS. KNOWLTON: If we can ask the Court check on 216,
2 215 and 217.

3 THE COURT: 216 is not in. Our record show 216 is not
4 in evidence.

5 MS. KNOWLTON: I need to worry about redacting this
6 for a non-party. I apologize. I have a redacted version of
7 215. I have this.

8 MR. WIRTH: 215 is 335 pages.

9 MS. MOTLEY: I don't think this whole thing --

10 THE CLERK: For 215, I have all subject to redaction.

11 MS. KNOWLTON: I have the redacted one.

12 THE COURT: You may approach.

13 MS. KNOWLTON: This was the redacted one given to the
14 witness.

15 (Brief recess taken.)

16 (Back on the record.)

17 THE COURT: We are back on the record in Case
18 No. 20-CV-1660 with the same appearance for the attorneys. Are
19 we all set with the exhibits?

20 MS. KNOWLTON: Your Honor, we have already given 311
21 to the jury. There's agreement that 214 was properly redacted.
22 The issue and why we had this delay is that the published
23 version of 215, which was again already published in full to the
24 jury during several examinations, is what was printed and
25 provided, and defense is now saying that they want a different

1 redacted version of 215.

2 MR. WIRTH: Judge, from the defense perspective, 215
3 was an exhibit in the case. And the announcement was that it
4 was redacted 20 pages. There was an obvious miscommunication
5 that it was apparently redacted. We assumed it was redacted to
6 20 pages. The 20 pages were redacted. It went from a 335-page
7 exhibit to about five lines.

8 From the defense perspective, the redactions are of
9 information pertaining to the plaintiff and relevant to the
10 defense in this case since it talks about -- takes out any
11 reference to how plaintiffs were identified before. The
12 Department of Transportation information was placed in the
13 report.

14 THE COURT: All right. One second, please. So 214 is
15 agreed upon?

16 MS. KNOWLTON: Yes.

17 THE COURT: Where is 214 physically? Is that correct
18 Mr. Wirth, no objection to 214?

19 MR. WIRTH: That is correct.

20 THE COURT: CSO, you may submit 214 for the jury. Can
21 you identify what 214 is?

22 MS. KNOWLTON: It is actually the citations.

23 MR. WIRTH: It is the citations redacted to just
24 plaintiffs.

25 THE COURT: Thank you. All right. Let's talk about

1 215 are the incident reports.

2 MS. KNOWLTON: 215 as it has been published to the
3 jury already in the redacted format that you have and again
4 that's the copy that was also at the witness box. When this was
5 being used, it was published in this form. I simply printed off
6 exactly what had already been published to the jury. That's
7 what is before you.

8 My frustration right now is that if objections were to
9 be made, they certainly should have been made at that time. To
10 have now us looking at a differently redacted version when this
11 has already been published to the jury seems to undermine the
12 whole process of the --

13 THE COURT: If you could pass me the --

14 MR. WIRTH: The easy solution, Judge, would have been
15 to give us a copy of it.

16 THE CLERK: This is the previous 214.

17 MS. KNOWLTON: The copy I gave you was the pre-printed
18 one that was used in front of the jury.

19 THE COURT: I have in hand two 215.

20 MS. BAYNARD: You have two of the same document. I
21 just have the first six pages. I can give you the pages 7
22 through 20.

23 THE COURT: Okay. So I have 215 with the first page
24 looking redacted as I am holding it up. And another version of
25 215 with that first page not blocked out.

1 MS. KNOWLTON: Correct.

2 THE COURT: So what is the issue here?

3 MS. KNOWLTON: During the court actual trial, the one
4 published to the jury is the one you have under your left hand
5 with the fully redacted first page. So the issue here is
6 apparently defense counsel is now raising new concerns with an
7 exhibit that's already been published to the jury.

8 THE COURT: Thank you. Is it as to this first page
9 only?

10 MR. WIRTH: No Judge. What you'll see is that what
11 you're holding I think in your right hand is redacted of all
12 non-plaintiffs. The exhibit that was submitted 215 is
13 335 pages, and the redacted 20 pages was only given to the
14 witness. And so when it says it was published, it was probably
15 put up on the screen, but the redacted version is not -- The
16 redacted version we assume was the 20 pages redacted the way
17 everything in this case has been redacted, and it is not that.

18 MS. BAYNARD: I believe the discussion on the record,
19 we both went up and went through it with the court reporter, was
20 that it was going to be redacted to exclude non-plaintiffs.
21 That was our understanding. We are fine with it being redacted
22 to exclude anybody who is not a plaintiff. But the version that
23 is the 215 if you go through the large portions blocked out,
24 that redacts plaintiffs. And, you know, the 215 that was filed
25 is our bates numbers that span 355 pages. So we're really not

1 trying to be difficult. That was the first time I've seen that
2 version of the document.

3 MS. KNOWLTON: Your Honor, this is true that it is
4 20 pages of their documents, but it was 20 pages of their
5 documents that was published that was subject to testimony that
6 they fully -- had full opportunity to do any cross examination
7 with. They've had the fully unredacted version for far longer
8 than we have.

9 If they had questions at the time or they didn't think
10 that we published already to the jury was appropriate, they
11 already had their opportunity to make that objection. This is
12 unbelievably confusing for the jury if they know this is what
13 they thought they saw and now they are getting something
14 completely different. By the way, no testimony has been offered
15 to support.

16 MS. BAYNARD: The jury did not see that entirety of
17 215. If you look at the court reporter's record, we talked
18 about John Larry section, the bottom of page 16 and 17, and we
19 come back on the record and we talked about we were fine with
20 215 in a redacted form.

21 The redacted version was never sent to defendants.
22 When I redacted the emails that in the case the jury asked for
23 them, I sent them over to the plaintiffs, and they sent me back
24 we want this additional redaction. So we had an agreement
25 before we came here. That document is redacted to exclude

1 plaintiffs' information.

2 THE COURT: As I am looking at this document now, I do
3 recall the publication of page 16 and 17 as to Mr. Larry when he
4 testified, and we had the conversation that that page spilled
5 over page 16 had spilled over onto the next page, page 17, but I
6 don't recall the testimony about the remainder of this.

7 MR. SCHWAB: Your Honor, if you recall when defendant
8 Roy was on the stand and I kept walking him through DOT records
9 as of, that's from this document. Everything else was redacted
10 out for the purposes of the jury.

11 That was the document in evidence. You know, there is
12 that additional issues. A lot of this is hearsay. There's
13 documents that were not written by any person that testified,
14 certainly not by a defendant. And moreover, this is an effort
15 at a side trial, just an attempt to try to get prejudicial
16 information in. I do not know how -- I don't know. I reviewed
17 these videos, and they clearly depict Aaron resisting arrest by
18 pulling away from officers. And when they fall to the ground,
19 Aaron continues to try to push up off the ground. It took three
20 officers to physically control Aaron's efforts to resist arrest.

21 I don't know how that's relevant to what defendant Roy
22 knew about the province of these records. If they want to point
23 to a place where it says I surveyed TLO records and verified
24 those records through DOT, I would agree.

25 If they have some site to that to say he would have a

1 reasonable basis for believing that the records did not come
2 from DOT, sure. But trying to get these entire records in is an
3 effort to drag our plaintiffs through the mud on wholly
4 irrelevant topics and things that we did not have the
5 opportunity to discuss because (a) we were trying to keep this
6 trial focused on the question of DOT records. But also because
7 they didn't make an objection at the right time.

8 MR. WIRTH: Judge, here's the -- Through a review of
9 the videos and comparison to known subjects from prior
10 incidents, many of the protestors were able to be identified.
11 Protestors were identified utilizing a combination of open
12 source information as well as police reports and databases.
13 That is the defense.

14 MS. KNOWLTON: There is no plaintiff information
15 attached to that.

16 THE COURT: Here's the problem for me now. The trial
17 has concluded. Exhibits have been received, and we're still
18 fighting about admitted evidence. It's been received. And
19 during the court final pretrial, during the trial, I entertained
20 objections. So I -- I don't know if I can do anything about an
21 exhibit that was already admitted.

22 MS. BAYNARD: Your Honor, it was not admitted in the
23 version that you are looking at. We stipulated to the admission
24 of 215 except for Larry pages to 215 with redactions from the
25 plaintiffs.

1 I went through with the court reporter to Attorney
2 Wirth's objection to it subject to redactions of non-plaintiffs.
3 This version of 215 and -- Truly even some of the document I
4 didn't realize that they didn't have back pages until I went up
5 on the stand to look for something, and I was like, oh, the
6 attachments aren't to this.

7 When we were preparing, I am looking at plaintiffs'
8 exhibit list with the bates ranges. We get here, it is shorter.
9 That's fine. We entered it through stipulation the entirety of
10 it to exclude non-parties, not to exclude all of the information
11 that they don't want going back to the jury. That's not what we
12 agreed to have excluded.

13 We agreed to take out non-plaintiffs just like we did
14 with the list with all of the email attachments that I sent to
15 them for -- to make sure they were okay with the redactions.
16 That is what we've taken out, non-plaintiffs.

17 THE COURT: But Ms. Baynard, you also know that
18 incident records are also different when they have narrative,
19 right?

20 MS. BAYNARD: I understand it can be yes, Your Honor.
21 If we're going to have a situation where now it's, well, they
22 stipulated to this being admitted and they didn't, then I guess
23 we did not stipulate to a document being admitted in that
24 fashion.

25 We stipulated to it being admitted to redactions of

1 plaintiffs' information -- sorry non-plaintiffs' information.
2 So that was in the course of going through some of the exhibits,
3 we were -- we don't have a problem with them whatever. If now
4 we get to determine the redactions and we were never provided
5 them, those redactions, I think if you go back through the
6 record, the version that was looked at was John Larry's portion.

7 So then fine, send John Larry's portion back. We're
8 not in agreement to the redacted version as plaintiffs' have
9 written Exhibit 215 on. I am not even sure which witness it was
10 completely gone through with.

11 THE COURT: Go ahead, Ms. Knowlton.

12 MS. KNOWLTON: It was gone through with multiple
13 witnesses which is why this is also so disturbing. They're
14 simply asking for a do over because they didn't use their
15 opportunity in the procedure and in the process of a trial
16 should be seriously undertaken. If an exhibit is coming in and
17 being used during testimony and you have a different idea of how
18 or what information that should -- how that should look, that's
19 your opportunity to make that argument. It has been published.
20 We didn't do this in secret. We didn't do this in any
21 underhanded manner.

22 Yes, there have been on-going redactions of things,
23 but this is something that when we took out the information and
24 published it to the jury, they did no other follow-up testimony
25 to say, wait, that's not the complete document. So that ship

1 has sailed to be quite frank, and it would be unduly burdensome
2 and confusing to the jury to not have what they actually saw be
3 the exhibit that actually goes back to the jury room.

4 MS. BAYNARD: Your Honor, we're talking about the
5 exhibits that were provided in this binder, the ones that we
6 downloaded that were filed. We're going off of the exhibit list
7 from the beginning, the exhibit list. So the suggestion it
8 should be undertaken with -- Being serious. I guess I didn't
9 realize I had to go double check to make sure that their
10 exhibits that they have here matched the binder.

11 I realized it when I saw we're looking at an exhibit
12 that is supposed to be this long, and the plaintiff has one page
13 of it. So it was brought up. Then you have 20 pages only.

14 Well, the one we have downloaded marked Plaintiffs'
15 Exhibit 15 on your exhibit list is 355. And then we agreed to
16 the bates, the 20 page bates range, that's fine, but we did not
17 agree to the redacted version that is now being used as an
18 exhibit, and we were never provided that.

19 THE COURT: So we are having a trial about exhibits
20 after the trial after the jury has been instructed after I had
21 asked counsel to confirm versions of exhibits throughout the
22 trial. So I am now to go back through the transcript to find
23 this document and retrace the record is what I am being asked to
24 do.

25 MS. KNOWLTON: We're certainly not asking to you do

1 that. Again, for the record, we were simply offering the
2 exhibit to go back to the jury as being the exhibit that was
3 actually used and actually already published. There's nothing
4 that has changed from that. There is certainly nothing that was
5 not available to defense since using the exhibit.

6 Absolutely we introduced the John Larry portion on
7 Tuesday and then the full document did come in on Wednesday.
8 And that part of it has been messy, but I do -- One of the
9 reasons something was different in the folder out of respect for
10 some of the sensitivity of some of the documents. That is all
11 we were trying to comply with. That is the only thing. This
12 exhibit is the printed version of what was published to the
13 jury, no additional changes were made.

14 THE COURT: Ms. Baynard, do you dispute 215 that is
15 Ms. Knowlton has proffered to me is the one that was submitted
16 to published before the jury?

17 MS. BAYNARD: Your Honor, I don't think we saw --
18 When they published it to the jury and showed portions with Sean
19 Kafer and John Larry, it wasn't the whole document. So if we're
20 agreeing this came in through stipulation, we stipulated to
21 being redacted to exclude non-plaintiffs.

22 So what would have been simple is hey, we want to use
23 this redacted version like I did and send it over. I am
24 supposed to I guess know that they are going to redact it to
25 take out things beyond non-plaintiffs.

1 MS. MOTLEY: Your Honor, if I may.

2 THE COURT: Yes.

3 MS. MOTLEY: I have a solution. I would -- My
4 solution is to go back to the jury only the pages that have been
5 published to them, which I believe is the bottom of page 16 the
6 top of page 17. And then I believe Attorney Schwab went through
7 some pages with the witness Joseph Roy.

8 Perhaps I know for other exhibits we have taken out
9 pages here and there. We can do the same with this, just send
10 back to the jury the pages that were published to them.

11 THE COURT: Ms. Baynard.

12 MS. BAYNARD: I would agreeable to that.

13 THE COURT: Can this be done now?

14 MR. WIRTH: We know it is 16 and 17.

15 MS. MOTLEY: The bottom of page 16.

16 THE COURT: Top of page 17.

17 MR. WIRTH: I can redact this right now and send it to
18 Evan.

19 MS. KNOWLTON: I think that is unnecessary if that is
20 what was published. If there's pages they want to take off of
21 that already printed version, that would save a lot of time.

22 MR. WIRTH: I do know that elements of page 16 and
23 elements of page 17 were essentially positioned on the screen so
24 they couldn't be seen. I think Milo had clips -- snidbits out
25 of it, so I don't know what pages those snidbits were from.

1 MS. MOTLEY: To be clear, we were talking about the
2 information that was actually published.

3 MR. SCHWAB: Mr. Larry comes out of page 28878.

4 MR. WIRTH: Give me two seconds here. I've got it
5 starting with arrested ten.

6 THE COURT: Excuse me, counsel. I am going to step
7 off the bench and give you time to prepare this.

8 MR. WIRTH: Thanks Judge. I think this is five
9 minute.

10 (Brief recess taken.)

11 (Back on the record.)

12 THE COURT: We are back on the record, Case
13 No. 20-CV-1660, with the same attorney appearances. Counsel,
14 are you ready on this exhibit issue?

15 MS. KNOWLTON: Yes.

16 MR. WIRTH: Yes.

17 THE COURT: For the record, please identify the
18 exhibit number. I believe it is 215.

19 MS. KNOWLTON: All set.

20 THE COURT: Ms. Knowlton, for the record if you could.
21 It is a revised version. If you could read the -- Is it bates
22 stamps at the bottom of it or how it is identified otherwise?

23 MS. KNOWLTON: With 215. So it actually starts at
24 bates number 28878 through 28890 plus 28892 and stops at 28893.

25 THE COURT: Ms. Baynard, is this acceptable to the

1 defense?

2 MS. BAYNARD: Sure.

3 THE COURT: That will be sent in to the jury. CSO, I
4 also have a note for the jury before in goes in just to put on
5 the record. As to Exhibit 311 requested that was sent in, as to
6 the request that contents of drop box link sent by Joseph as
7 admitted into evidence, 214 was previously sent. And now a
8 revised 215 is being sent. As to the last question permissible
9 uses of the DPPA, I am sending a note which reads as to
10 permissible uses of the DPPA, please consult with jury
11 instructions. Thank you, everyone.

12 (Brief recess taken.)

13 (Back on the record.)

14 THE COURT: We are back on the record, Case
15 No. 20-CV-1660. I have Ms. Knowlton for the plaintiff.
16 Mr. Wirth and Ms. Baynard for the defense. I have a note from
17 the jury. Could we see Exhibit 213?

18 MS. KNOWLTON: We have that.

19 THE COURT: If you please show it to defendants.

20 MS. BAYNARD: That's fine.

21 THE COURT: May I see it please, Ms. Knowlton? All
22 right. CSO, if you please render this to the jury. Thank you
23 everyone. We'll stand down.

24 (Brief recess taken.)

25 (Back on the record.)

1 THE COURT: Please be seated. We're back on the
2 record, Case No. 20-CV-1660. We have another question from the
3 jury. Reads, I am requesting all exhibits where the Wauwatosa
4 Police Department received open records request emails.

5 MS. KNOWLTON: I have those as numbers 14, 17, 18, 20,
6 21, 22.

7 MS. BAYNARD: Are those in evidence?

8 MS. KNOWLTON: I only have what's in evidence.

9 THE COURT: Our records show that they are.

10 MS. KNOWLTON: These are just the requests, the
11 requests received by Wauwatosa.

12 THE COURT: Ms. Baynard, is there an objection?

13 MS. BAYNARD: No.

14 THE COURT: CSO, you may please render those to the
15 jury.

16 (Brief recess taken.)

17 (Back on the record.)

18 THE COURT: Case No. 20-CV-1660, back on the record
19 with Ms. Knowlton from the plaintiff and Mr. Wirth from the
20 defense.

21 MS. KNOWLTON: I apologize, Your Honor. There were
22 two additional requests that had already been entered.
23 Mr. Wirth has already reviewed them, and we're prepared to just
24 let them go forward to the jury.

25 THE COURT: Mr. Wirth, do you wish to be heard?

1 MR. WIRTH: No, we stipulate to that going back.

2 THE COURT: CSO, please render that to the jury.

3 THE CLERK: 223 and 224.

4 MS. KNOWLTON: Correct.

5 THE COURT: Thank you. While we are still on the
6 record, do you have a sense of how many more admitted exhibits
7 that we have? I know we had a lot but not all were admitted and
8 received.

9 MS. KNOWLTON: From plaintiffs' exhibits there's only
10 20 remaining. They have the others.

11 THE COURT: Mr. Wirth.

12 MR. WIRTH: I am trying to check my chart against
13 what's being requested, and I believe that that is the one
14 binder of admitted.

15 MS. KNOWLTON: This is the plaintiffs' admitted. I
16 believe this is the defendants, but the defendants only had two
17 admitted, but they are very large so those are two.

18 MR. WIRTH: We have transferred the one to the
19 redacted version of it.

20 THE COURT: Thank you. So the reason I raised the
21 question, the jury can have access to all admitted evidence. So
22 one way of approaching this is to send them everything. One of
23 the reasons I wait for them to request it is sometimes they
24 don't want to see everything. Sometimes they want to see
25 specific ones. This one with heavy redacted I wanted to stay

1 here to give the parties a chance to make sure everything that
2 is going on -- going into them has been properly redacted and
3 actually that was received, et cetera, et cetera.

4 Do the party have any objection to sending them all in
5 or waiting for them to ask for them? Do the parties have a
6 view?

7 MS. MOTLEY: Your Honor, given the hour, I would
8 prefer if they would just ask for things to be completely
9 honest. I don't want to -- I know they have a job to do. I
10 think that is what I would like if they ask for evidence then
11 fine.

12 THE COURT: Mr. Wirth.

13 MR. WIRTH: I would agree. There's probably a risk
14 of, you know, after a couple hours of deliberation introducing a
15 couple hundred more pages of documents, that might make them
16 start over.

17 THE COURT: All right. I wanted to raise it as one
18 possibility. We will wait and take directions from our jury.

19 MR. SCHWAB: Did they ask for all documents?

20 MR. WIRTH: They are asking for bits and pieces, and
21 the Judge's suggestion is rather than having everybody come back
22 every 20 minutes, it seems like they are on the open records
23 part of the case, let's put it that way.

24 MR. SCHWAB: I apologize.

25 THE COURT: Okay. All right. I'll stand down. We'll

1 wait for further instructions from the jury. Thank you
2 everyone.

3 (Brief recess taken.)

4 (Back on the record.)

5 THE COURT: Case No. 20-CV-1660, we are on the record
6 with all plaintiffs' counsel and both defendants' counsel. I
7 have a question from the jury. Are height, weight, hair color
8 and eye color considered as personal information pertaining to
9 the DPPA? Page 22 of our jury instruction does have the
10 definition of personal information. Anyone -- It does not
11 include the specifics.

12 It reads, personal information is information that
13 identifies an individual. My, you know, my default but my
14 practice is generally refer the jury back to the jury
15 instructions. Either side wish to be heard?

16 MS. BAYNARD: I am pulling up your instructions.

17 MS. MOTLEY: Your Honor, I sort of agree with the
18 Court. I think the jury instructions are the jury instructions.
19 I don't think they have to figure it out, I guess.

20 THE COURT: Mr. Wirth, wish to be heard?

21 MR. WIRTH: I agree, Judge. For better for worse, the
22 Court instructs them on the law, and they've got to do what the
23 Court tells them.

24 THE COURT: I will respond please consult the jury
25 instructions. Do the parties have a view of instructing them to

1 definition of personal information in the jury instruction or do
2 you prefer to be the general, please consult the jury
3 instruction?

4 MR. WIRTH: Like tell them it is on page 22, that kind
5 of thing?

6 THE COURT: I could say page 22. I could say please
7 see definition or please see personal information.

8 MS. KNOWLTON: I think that's considerate.

9 MS. MOTLEY: I have no problem with that.

10 MR. WIRTH: Fine. Is there a number for the jury
11 instruction that contains that?

12 THE COURT: It is page numbered and they also have
13 titles. So page 22 is the definitions page and the second entry
14 is the personal information entry.

15 MR. WIRTH: My only concern is if they have to read
16 them in conjunction. I would just say the jury instruction at
17 page 22 have the definition.

18 MR. SCHWAB: Your Honor, just briefly. There is
19 Seventh Circuit authority that specifically says individual's
20 date of birth, height, weight, hair color, fall within the range
21 of personal information.

22 THE COURT: Yes.

23 MR. SCHWAB: I worry they are seeking clarification,
24 and there is on-point clarification that is binding on this
25 Court. And, you know, this is not a question. It's not -- It

1 is a question of law in the legal sense. There's not a question
2 behind it, though. It's pretty established. I think that it
3 would be reasonable for the Court to actually just respond
4 affirmatively yes.

5 THE COURT: Mr. Wirth or Ms. Baynard.

6 MR. WIRTH: I don't think we can do that, Judge. If
7 it was a specific question with respect to a misunderstanding of
8 an instruction, but this is in addition to an instruction. And
9 frankly, I don't know what Mr. Schwab is citing to. I am not
10 saying he's wrong. I just don't even know.

11 At this point unless they come out -- Unless it turns
12 out they've got another question saying can you please tell us
13 again, I think the default is always the first time around you
14 tell them read the instructions.

15 THE COURT: All right. I am familiar with the line of
16 cases from the Seventh Circuit defining personal information
17 that identifies individuals to include those descriptors that
18 the jurors are requesting. But because we did not include them
19 in the original instruction, it is an amendment at this point,
20 so I will just defer them to page 22 of the jury instructions
21 and we'll see if they have additional questions and take it from
22 there. Thank you everyone.

23 (Brief recess taken.)

24 (Back on the record.)

25 THE COURT: Counsel, I understand we have a verdict

1 from the jury. Ready to have them brought out, plaintiff?

2 MS. MOTLEY: Yes, Your Honor.

3 THE COURT: For the defense?

4 MR. WIRTH: Yes.

5 THE COURT: CSO please bring the jury in, please.

6 (Jury enters.)

7 THE CLERK: Judge Nancy Joseph on the bench calling
8 Case No. 20-CV-1660, Andrew Aaron, et al v. Dominick Ratkowski,
9 et al. Appearances remain the same.

10 THE COURT: Good afternoon, Members of the Jury. I
11 understand that you have reached a verdict. And is the
12 foreperson ready to turn the verdict?

13 FOREPERSON: Yes.

14 THE COURT: CSO collect that, please. Mr. Romel, if
15 you please publish the verdict.

16 THE CLERK: We, the Jury, empaneled and sworn to try
17 the issue in this action being directed by the Court to answer
18 the following question submitted to us by the verdict find and
19 answer as follows.

20 Question Number 1. For each plaintiff, did defendant,
21 Dominick Ratkowski, knowingly obtain, use or disclose
22 plaintiffs' personal information from a motor vehicle record for
23 a purpose not permitted by the DPPA? Complete the box yes or
24 no. If you answer yes in the box, write how many times. Answer
25 to all plaintiffs no.

1 Question Number 2. For each plaintiff, did defendant,
2 Joseph Roy, knowingly disclose plaintiffs' personal information
3 from a motor vehicle record for a purpose not permitted by the
4 DPPA? Complete the boxes, yes or no. If you write yes in the
5 box, write in how many times total. Answer to all no.

6 Question Number 3. Did plaintiffs prove by a
7 preponderance of the evidence that defendant, Dominick
8 Ratkowski, acted wilfully or in reckless disregard of the law?
9 Answer no.

10 Question Number 4. Did plaintiffs prove by a
11 preponderance of the evidence that defendant, Joseph Roy, acted
12 willfully and in reckless disregard of the law? Answer no.

13 Signed by the foreperson on today's date, May 5, 2023.

14 THE COURT: Mr. Romel, please poll the jury by number.

15 THE CLERK: Juror Number 3, was this and is this your
16 verdict? If so answer, I do.

17 JUROR: I do.

18 THE CLERK: Juror Number 4, was this and is this your
19 verdict? If so, answer I do.

20 JUROR: I do.

21 THE COURT: Juror Number 8, was this and is this your
22 verdict? If so answer, I do.

23 JUROR: I do.

24 THE CLERK: Juror Number 11, was this and is this your
25 verdict? If so, answer I do.

1 JUROR: I do.

2 THE CLERK: Juror Number 12, was this and is this your
3 verdict? If so answer, I do.

4 JUROR: I do.

5 THE COURT: Juror Number 13, was this and is this your
6 verdict? If so, answer I do.

7 JUROR: I do.

8 THE CLERK: Juror Number 15, was this and is this your
9 verdict? If so, answer I do.

10 JUROR: I do.

11 THE COURT: Juror Number 17, was this and is this your
12 verdict? If so, answer I do.

13 JUROR: I do.

14 THE COURT: Members of the Jury, on behalf of the
15 Court and the parties, we do thank you for your service. At
16 this time, I'll ask the CSO to escort you back to the jury
17 deliberation and await further instructions. Please stand for
18 the jury.

19 (Jury excused.)

20 THE COURT: Ms. Motley, anything further for this
21 evening?

22 MS. MOTLEY: I don't believe so, Your Honor.

23 THE COURT: Mr. Wirth, anything further for this
24 evening?

25 MR. WIRTH: Judge, I'll need to make sure -- As a

1 housekeeping matter, I assume the Court will set a time for any
2 motions after verdict, but the defense would move for judgment
3 on the verdict.

4 THE COURT: All right. At this time it is late in the
5 hour, you are all exhausted. The Court will be in touch to
6 address any further matters and any further scheduling. Please
7 have a good evening.

8 BAILIFF: All rise.

9 (Whereupon proceeding was concluded.)
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RPR, RMR, Official Court Reporter
for the United States District Court for the Eastern District of
Wisconsin, do hereby certify that the foregoing pages are a true
and accurate transcription of my original machine shorthand
notes taken in the aforementioned matter to the best of my skill
and ability.

Signed and Certified June 28, 2023.

/s/Susan Armbruster

Susan Armbruster

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